



# Federal Register

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**Part IV**

## **Department of Agriculture**

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**Grain Inspection, Packers and Stockyards  
Administration**

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**9 CFR Part 206  
Swine Packer Marketing Contracts;  
Contract Library; Final Rule**

**DEPARTMENT OF AGRICULTURE****Grain Inspection, Packers and Stockyards Administration****9 CFR Part 206**

[PSA-2000-01-b]

RIN 0580-AA71

**Swine Packer Marketing Contracts; Contract Library****AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.**ACTION:** Final rule.

**SUMMARY:** We are establishing regulations to implement a swine contract library as required by the Swine Packer Marketing Contracts subtitle of the Livestock Mandatory Reporting Act of 1999. The regulations specify how we will establish a library or catalog of contract types that packers use to purchase swine for slaughter and make information about the contract terms available to the public. The regulations also establish monthly reports on the estimated number of swine committed for delivery to packers under existing contracts.

**DATES:** *Effective Date:* September 10, 2003.*Compliance Dates:*

1. Each packer's initial submission of example contracts representing existing and available contracts is due November 3, 2003.

2. Each packer's initial submission of monthly reports is due December 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dr. Stuart Frank, Supervisory Economist, USDA GIPSA, (515) 323-2579, Suite 317, 210 Walnut Street, Des Moines, IA 50309, or via e-mail at [SwineContractLibrary.Gipsa@usda.gov](mailto:SwineContractLibrary.Gipsa@usda.gov).

**SUPPLEMENTARY INFORMATION:****Congressional Mandate**

Congress passed the Livestock Mandatory Reporting Act of 1999<sup>1</sup> (LMRA), which includes requirements for mandatory price reporting by packers and requirements for reporting of certain information on the contract types used by packers for procurement of swine for slaughter. The LMRA also amended the Packers and Stockyards Act, as amended and supplemented (7 U.S.C. 181-229) (P&S Act) to require the Secretary to establish and maintain a library or catalog of the contract types

made available by certain packers to swine producers. The LMRA requires certain packers (specified below) to submit contracts to create the contract library. The amendment also requires the Secretary to make information concerning those contract types available to producers and other interested parties. Additionally, the Secretary is to obtain and report monthly 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.

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 rule sets forth the Grain Inspection, Packers and Stockyards Administration (GIPSA) regulations to implement section 934 of the LMRA, which amended the P&S Act to require the Secretary to establish and maintain a library or catalog of the types of contracts offered by certain packers to swine producers. We are implementing the new sections of the P&S Act in regulations as new Part 206 of Title 9 of the Code of Federal Regulations (the regulations, 9 CFR 206). The regulations are described below.

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. By providing this information, the swine contract library reports are intended to provide more transparency about contract terms and equalize access to market information for all market participants.

**Background**

On September 5, 2000, we published a proposed rule<sup>2</sup> in the **Federal Register** (65 FR 53653-53679) to implement the swine contract library amendments to the P&S Act. In broad terms, the proposed regulatory program can be summarized as follows. The proposed

rule contained three new regulatory sections that would appear in the Code of Federal Regulations at Part 206 of Title 9. The proposed first section, section 206.1, contained the definition of terms that would apply to the regulations. The definitions were, in the main, taken from the definitions in the LMRA. Proposed section 206.2, the contract library section of the regulations, required 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. We proposed to publish a summary of contract terms from the example contracts that are available in each of five regions of the country and by contract type. Proposed section 206.3, the monthly report section, required packers to provide an estimate, by month, for the following 12 months, of the number of committed swine by the type of contract, as well as an estimate of the number of swine that could potentially be delivered if all existing expansion clauses in contracts are exercised. The information from the packer's monthly reports would be aggregated and reported by GIPSA on a regional basis. In the proposed rule, we indicated that both the summary of contract terms and the aggregated monthly report would be available on the Internet on the GIPSA Web site or at the GIPSA Regional Office in Des Moines, Iowa.

We received 11 comments during the 30-day comment period that ended on October 5, 2000. Along with reviewing the comments submitted, we reviewed the proposal to determine if changes should be made to make the final rule more clear and the reporting process more efficient. We will describe those changes and address the comments below.

*Definition of "Packer"*

While developing the swine contract library regulations, we identified 11 small packers that purchase a small number of swine and have them slaughtered at plants that are large enough to make these small packers fit the definition of "packer" as contained in the proposed rule. As reported to us on packer annual reports, in 2000, these 11 packers had a combined total of 164,516 hogs slaughtered for them by other packers, with the individual amounts from each of the 11 packers ranging from 181 to 69,262 hogs. Most of these packers purchase hogs from the spot market and do not use contracts to purchase hogs for slaughter. These 11 packers are not comparable in size to

<sup>1</sup> Title IX of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriation Act of 2000 (Pub. L. 106-78).

<sup>2</sup> Refer to the proposal for a detailed explanation of (1) the requirements of the LMRA for the implementation of the swine contract library and (2) our interpretation of the requirements.

the 33 packers<sup>3</sup> that we estimate would be required to report under the swine contract library. We do not anticipate that requiring small packers, such as these 11 packers, to report would add enough value to the information we report from the swine contract library to justify the anticipated burden on such small packers. We determined that it would be reasonable to exempt such small packers from the requirements of the swine contract library regulations.

We revised the definition of packers in section 206.1 to apply to a packer purchasing at least 100,000 swine per year. We used 100,000 as the minimum for consistency with the legislative requirement for the average number of hogs that each plant slaughters. In comparing the purchases of these 11 small packers, in 2000, the maximum annual purchase was 69,262 hogs; as this packer increases its annual slaughter to 100,000, it will be required

to report as required by the swine contract library regulations. Other changes to the definition included deleting the phrase "or firm" from the definition of packer, because the definition of person in the P&S Act includes individuals, partnerships, corporations, and associations making the use of the phrase "or firm" unnecessary, and deleting the word "would" from the definition of packer.

Text of the regulation as proposed	Text of the regulation as revised
<p><i>Packer.</i> 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: * * *</p>	<p><i>Packer.</i> Any person engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. The regulations in this part only apply to a packer purchasing at least 100,000 swine per year and slaughtering swine at a federally inspected swine processing plant that meets either of the following conditions: * * *</p>

*Submission of Example Contracts*

During the development of the swine contract library regulations, we identified the packers and the specific plants that currently meet the requirements of the regulations. The proposed rule did not specify how we will provide information about the swine contract library to those packers; when this rule is published, we will notify each of those packers, in writing, about the information that each packer will be required to provide, and provide a packer identification number, which we will assign. In addition to providing a copy of guidelines, forms, and instructions, the notification will provide information about the option of submitting information electronically.

Each of these packers will be required to submit example contracts for each plant at which it slaughters or has hogs slaughtered that meets the definition in this rule. Each packer will use the criteria established in this rule to determine which existing and available contracts can be represented by one example contract. The packer will submit as many example contracts as are necessary to represent all of its existing and available contracts at the time the initial submission is due.

As a new option, we developed guidelines that the packer may follow to submit example contracts and developed an option for the electronic submission of example contracts. The guidelines include an optional cover sheet for the identification of example contract submissions. The guidelines

are intended to eliminate the confusion expressed by commenters about what needs to be submitted.

In the proposed rule, we proposed to have each packer sort its contracts into six contract type categories, identify the example contracts within each contract type category, and then submit the example contracts. Since the publication of the proposed rule, we realized that each packer could identify its example contracts without having to sort the contracts into the six contract type categories. We further realized that there would be greater consistency in the contracts placed into each category if we identified into which contract type category each example contract will be placed, which will relieve packers of the additional burden of sorting its contracts into the six categories. Therefore, packers do not need to sort contracts by category.

After we receive the example contracts, we will categorize the example contracts, using the six contract type categories established in this rule. We will notify the packer of the contract type category for each example contract submitted. The packer will need to know the contract type category to which each example contract is assigned to prepare the information required for the monthly reports. We will provide the packer with this information at least 2 weeks prior to the required submission of monthly reports. In the monthly reports that each packer will submit, the packer will report the estimated deliveries of hogs

for all contracts; in the report, the packer will group the estimates by the contract type categories. We will use the contract type categories to summarize information from the example contracts and the monthly reports and to provide public reports. The public reports will be provided by contract type and geographic region. Information will only be released to the public if confidentiality requirements can be met.

In addition to the initial submission of existing and available contracts, as contracts are made available, revised, or expire, each packer should use the following guidelines to determine when another submission or notification of a change is required.

- Required submission of contract made available: When a contract that represents an example contract is made available to swine sellers, the packer will submit it to GIPSA as an example contract (for discussion purposes, we will call this Example contract A).
- Potential subsequent submission due to contract changes: When a contract changes, for example, the contract is made available and negotiations result in a new example contract, the packer will submit the new example contract to GIPSA and specify if it replaces the previously submitted example contract or if it is an additional new example contract (for discussion purposes, we will call this Example contract B). Example contracts would not be continuously submitted to GIPSA during negotiations; one would be submitted when it is made available to sellers and, when necessary, another

<sup>3</sup> Based on the 5 year average using the most recent data, which included 2002 slaughter data for

federally inspected plants compiled by the National

Agricultural Statistics Service, there are 33 packers that will be submitting contracts for 53 plants.

would be submitted when the negotiation resulted in a contract or when an existing contract changes.

—New additional example contract example: If the packer and the producer agree to a contract with a change, which results in a different example contract (Example contract B) and the packer continues to make Example contract A available to other producers, the negotiated contract will be submitted as a new example contract (Example contract B).

—Replacement example: If, however, in that scenario, the packer no longer makes the original Example contract A available to any other producer and Example contract A is no longer used, then the negotiated contract would be submitted as an example contract to replace the previously submitted Example contract A.

- Notification of example contracts that have expired or that have been withdrawn: When a previously submitted example contract no longer represents any existing contracts, the packer will notify us that the example contract has expired. When a previously submitted example contract did not result in any contracts between the packer and seller(s) and no longer represents any available contracts, the packer will notify us that the example contract was withdrawn.

The requirements for submitting example contracts and subsequent notifications apply to both written and verbal contracts. The packer will provide written documentation for example contracts that represent verbal contracts. The guidelines identify the information that packers should document for verbal contracts. As we stated in the proposed rule (65 FR 53659):

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.

#### *Changes to the Monthly Report Submission Form*

In addition to the changes we made to the rule, in developing Form P&SP-341, we revised the form from the sample shown in the proposed rule. We revised the look and functionality of the form due to the technology available to read the incoming forms and place the information directly into the database. We made additional changes on the form in order to make the form more understandable and to more accurately specify the information required to be submitted on the form. Images of both the proposed sample and the current version of the form are available at <http://www.usda.gov/gipsa/rulemaking/current/Fed-reg.htm>. The overall look of the form was revised to be a scanable form, which means that the form may be filled in and when we receive it and scan it into a computer file, a computer program will automatically put the information from the completed form into the correct fields in the database. Therefore, the one-page sample as shown in the proposed rule became a three-page form.

When the packer logs in to fill in the electronic version of the form, several items will automatically be filled in. Except for information that will be pre-filled on the electronic version of the form, the electronic version of the form is identical to the hard copy of the form. In addition to the information shown on the sample, we are requesting a Packer ID number, which we will provide to the packer.

We changed the main title of the form from "Packer/Plant Report" to "Monthly Report" for consistency with the rule. In the instruction line, we removed the reference to the regulations and added the monthly due date. The sample form requested the "State where plant is located;" we revised this item to request the city and state in which the plant is located because a packer with multiple plants may have more than one plant in the same state. The sample form requested a phone number; we revised the placement of this item to specify that we are requesting the phone number for the contact person. The sample form included a certification statement and a space for a signature; the option for electronic submission includes the ability to use an electronic signature; we will provide the packer with the required information.

We changed the names of two fields as follows: Firm Name became Packer Name and Date of Report became Report Month and Year.

We moved the placement of the field for the Federal Inspection Number (the

USDA Food Safety Inspection Service assigns this number to the plant).

Because the scanable form is a multi-page form, we added fields for the Packer ID and the Federal Inspection Number at the top of pages 2 and 3 of the form to ensure that each submission stays together and is recognized as a complete submission. In addition, we have numbered each section and item on the form for easier reference in the instructions for completing the form. Specifically, the three pages of the form have been labeled as sections 1, 2, and 3. Section 1 requests the identification information (labeled as items 1 through 12); Section 2 requests estimated deliveries (items 13 through 17); and Section 3 requests estimated maximum deliveries (items 18 through 22). We made changes to the labels shown in the table in the sample form to add clarity to the information requested.

Specifically, we changed the labels for each of the tables as follows: we changed "Number of Head of Estimated Deliveries of Swine" to "Estimated Number of Swine To Be Delivered Under Existing Contracts" and we changed "Number of Head of Estimated Maximum Deliveries of Swine" to "Estimated Maximum Number of Swine To Be Delivered Under Existing Contracts." We corrected the labels in the tables from "Existing Contract Types" to "Contract Types." We added the explanatory text "(12 Months Following the Report Month)" to the Month/Year label. On the sample form, the month/year elements were illustrated with a four-digit year; on the actual form, the packer will only need to provide the last two digits of the year. On the sample form, the row for Available contracts shows an X for one of the contract types to denote the packer had available contract(s) of that type; to facilitate the electronic processes, we changed this row to provide "yes" and "no" choices. Similarly, on the sample form, the row for Expansion clauses required the packer to fill in the number(s) related to the expansion clauses in the existing contracts of each contract type; we changed this row to provide boxes to mark for expansion clauses 1, 2, and 3.

Copies of the form and the instructions are available upon request and have been included in the information collection package submitted to the Office of Management and Budget (OMB) for approval.

Other changes and corrections have been made to the regulations. These changes are summarized later in this document.

**Discussion of Comments**

On September 5, 2000, we published a proposal in the **Federal Register** (65 FR 53653–53679) to implement the swine contract library regulations as required by the Swine Packer Marketing Contracts subtitle of the LMRA. We solicited comments concerning our proposal for 30 days ending October 5, 2000. We received 11 comments by that date. The comments were from swine producers, swine producer groups, meat packers, meat packer groups, and a state Department of Agriculture. Seven comments supported the proposal in part. The comments raised some questions and concerns about parts of the proposed rule. These questions and concerns and our response to those comments, including changes we are making to the rule, are discussed below.

*Packer Reporting Clarifications*

*Comment:* The use of the terms “type of contract” and “example contract” needs clarification.

*Response:* There was apparent confusion caused by the use of the terms “type of contract” and “example contracts” in the proposed rule. The

term “type of contract” is used, as it is in the legislation, to define contract categories. The term “example contract” is used to identify the contracts that packers will submit to GIPSA.

“Type of contract” refers to the categories that will be used throughout the swine contract library to group contracts. The term “type of contract” was used and defined in the LMRA; in order to eliminate confusion we will use the term “contract type” in its place in this document and the rule. As defined by the LMRA, the contract type categories are identified by the way in which base price is determined and by the presence or absence of a ledger account.<sup>4</sup> The categories will be used for aggregating data on contracts and contract information in the swine contract library. The six contract type categories used in the swine contract library 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.

GIPSA will sort packers’ contracts into these six categories; the use of contracts in different categories will vary by packer. For example, one packer’s contracts may all fit into one category while another packer’s contracts may fit into three of the six categories.

In the proposed rule, “type of contract” was defined in section 206.1. The definition specified the six categories. For clarity, we changed the term “type of contract” to “contract type” throughout the rule. These changes appear in paragraphs 206.2(f), 206.3(c)(2), (3), (5), 206.3(g)(ii), (iii), and (v). In addition, we corrected the definition of the term by adding a comma after the word packer in the first sentence. Due to additional changes in response to another comment, the changes for paragraphs 206.3(c)(2) and (g)(ii) are shown following the other comment.

Text of the regulation as proposed	Text of the regulation as revised
<p><i>Type of Contract.</i> 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: * * *</p>	<p><i>Contract type.</i> The classification of contracts or risk management agreements for the purchase of swine committed to a packer, by the determination of the base price and the presence or absence of an accrual account or ledger (as defined in this section). The contract type categories are: * * *</p>
<p>206.2(f) <i>What information from the swine packer marketing contract library will be made available to the public?</i> 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.</p>	<p>206.2(f) <i>What information from the swine contract library will be made available to the public?</i> GIPSA will summarize the information it has received on contract terms, including, but not limited to, base price determination and the schedules of premiums or discounts. GIPSA will make the information available by region and contract type as defined in §206.1, for public release one month after the initial submission of contracts. Geographic regions will be defined in such a manner to provide as much information as possible while maintaining confidentiality.</p>
<p>206.3(c)(3) <i>Estimates of committed swine.</i> 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.</p>	<p>206.3(c)(3) <i>Estimates of committed swine.</i> Each packer must provide an estimate of the total number of swine committed under existing contracts for delivery to each plant for slaughter within each of the following 12 calendar months beginning with the 1st of the month immediately following the due date of the report. The estimate of total swine committed will be reported by contract type as defined in §206.1.</p>
<p>206.3(c)(5) <i>Maximum estimates of swine.</i> 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.</p>	<p>206.3(c)(5) <i>Maximum estimates of swine.</i> The packer’s estimate of the maximum total number of swine that potentially could be delivered to each plant within each of the following 12 calendar months, if any or all of the types of expansion clauses identified in accordance with the requirement in paragraph (c)(4) of this section are executed. The estimate of maximum potential deliveries must be reported for all existing contracts by contract type as defined in §206.1.</p>
<p>206.3(g)(3)(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.</p>	<p>206.3(g)(3)(iii) The sum of packers’ reported estimates of the total number of swine committed by contract for delivery during the next 6 and 12 months beginning with the month the report is published. The report will indicate the number of swine committed by geographic reporting region and by contract type.</p>

<sup>4</sup> A ledger or accrual account is an account held by the 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.

Text of the regulation as proposed	Text of the regulation as revised
<p>206.3(g)(3)(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.</p>	<p>206.3(g)(3)(v) The sum of packers' reported estimates of the maximum total number of swine that potentially could be delivered during each of the next 6 and 12 months if all expansion clauses in current contracts are executed. The report will indicate the sum of estimated maximum potential deliveries by geographic reporting region and by contract type.</p>

To provide information on the contract types available, GIPSA considered the information to be provided and the best way to collect that information. GIPSA's interpretation of the requirements is that we should make available information about contract terms (for example, noncarcass merit premiums) that may affect the calculation of the actual price paid to producers. This information is available in the contracts and attached documents that complete the contract. GIPSA considered requiring each packer to submit all of its contracts, but determined that would be unnecessarily burdensome and would not be feasible to publish information in a timely manner. Therefore, to collect the information, GIPSA proposed to require packers to submit example contracts.

"Example contracts" are contracts that a packer submits to GIPSA to represent the contracts that the packer has with or makes available to producers. The packer must review its contracts and select an example contract to represent those contracts that are identical based on the following criteria (referred to as the "four example-contract criteria"):

- (1) Base price or determination of base price;
- (2) Application of a ledger or accrual account;

- (3) Carcass merit premium and discount schedules; and
  - (4) Use and amount of noncarcass merit premiums and discounts.
- Section 206.2, paragraphs (b) and (c), requires packers to submit an example of each contract; paragraph (d) specifies the four criteria the packer must use to identify example contracts.
- Comment:* What contracts need to be reported?

*Response:* Each packer must submit as many example contracts as are required to represent all of the contracts that it currently has with or makes available to a producer or producers. For the initial submission, the packer will submit example contracts that represent all of the existing and available contracts. For subsequent submissions, the packer will submit example contracts when a change to a previously submitted example contract occurs or a new contract is made available that results in a new example contract based on the four example-contract criteria listed above.

*Comment:* The use of the terms "available," "existing," and "offered" to describe contracts needs clarification. Specifically, the reporting of "offered" contracts includes contracts that have expired. Packers should submit only available and existing contracts.

*Response:* We will require packers to submit example contracts for available and existing contracts. The words

"offered," "available," and "existing" were all used in the legislation. In the proposed rule we addressed the use of the three terms and explained our interpretation of the use of the words. All three of the words were used with reference to information to be submitted by packers. As stated in the proposed rule, "Types of contracts offered" includes both "types of contracts available" and "types of existing contracts" (65 FR 53655).

We eliminated the use of the term "offered contracts" and replaced it with "available and existing contracts," as appropriate. In addition, to further eliminate confusion, we eliminated the use of the word "offer" as in "new offers" and replaced it with the term "contracts made available" as appropriate. The words "offers," "offered," and "offering" were all used in the rule language in the proposed rule; to eliminate confusion, we revised the rule language to use the words "available" and "existing" in their place. These changes appear in the definition of the term "noncarcass merit premium or discount," paragraphs 206.2(c) (title and text), (h), 206.3(c)(1), (c)(2), and (g)(3)(ii). (Paragraphs 206.2(c) and (h) were also revised in response to another comment; the changes to the proposed text for these paragraphs of the regulations are shown below in response to that other comment.)

Text of the regulation as proposed	Text of the regulation as revised
<p><i>Noncarcass merit premium or discount.</i> 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.</p>	<p><i>Noncarcass merit premium or discount.</i> An increase or decrease in the price for the purchase of swine made available by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium or discount is known before the purchase and delivery of the swine.</p>
<p>206.3(c)(1) <i>Existing contracts.</i> 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.</p>	<p>206.3(c)(1) <i>Number of swine to be delivered under existing contracts.</i> Existing contracts are contracts the packer currently is using for the purchase of swine for slaughter at each plant. Each packer must provide monthly estimates of the number of swine committed to be delivered under all of its existing contracts (even if those contracts are not currently available for renewal or to additional producers) in each contract type as defined in § 206.1.</p>
<p>206.3(c)(2) <i>Available contracts.</i> 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.</p>	<p>206.3(c)(2) <i>Available contracts.</i> Available contracts are contracts the packer is currently making available to producers, or is making available for renewal to currently contracted producers, for the purchase of swine for slaughter at each plant. On the monthly report, a packer will indicate each contract type, as defined in § 206.1, that the packer is currently making available.</p>

Text of the regulation as proposed	Text of the regulation as revised
206.3(g)(3)(ii) The types of contracts currently being offered to additional producers or available for renewal to currently contracted producers in each geographic region.	206.3(g)(3)(ii) The contract types currently being made available to additional producers or available for renewal to currently contracted producers in each geographic region.

*Comment:* Packers should submit any and all amendments, addenda, or specialty clauses that they make available. Submitted contracts should be fully representative of those contracts currently in effect.

*Response:* The regulation requires packers to submit example contracts. We believe that the example contracts should include any and all amendments, addenda, and specialty clauses that complete the contract. As discussed above, we determined that packers would submit example contracts based on a set of criteria. The criteria used to identify example contracts focuses on price determining contract terms. Using this criteria, the example contracts submitted should provide the full range of price determining contract terms for all available and existing contracts. The example contracts may not provide all of the other provisions (non-price determining contract terms) for all available or existing contracts. GIPSA will publish as much information as possible on the non-price determining contract terms contained in the example contracts while maintaining confidentiality. Therefore, we did not make any changes in response to this comment.

*Comment:* The requirements for "reporting concurrently" and "real-time reporting" need clarification. How would this apply, especially during contract negotiations? Contracts and proposed changes to contracts should not have to be reported until negotiations are final. Publish information within one week of the contract first being made available, issuing either a new contract or a change in a contract rather than on the actual day. Examples of contract development include: a final contract developed through a series of discussions with producers and groups

of producers; contract made available and accepted the same day or the next day; and contracts renegotiated 2 weeks later and again a week later.

*Response:* After a packer's initial submission of example contracts for the swine contract library, the packer must provide example contracts when a contract is made available that results in a different example contract as determined by using the four example-contract criteria. The LMRA requires the Secretary to make the information available "on a real-time basis if practicable." In the proposed rule, we used the word "concurrently" for the timing of this reporting and proposed to require the packer to provide example contracts to GIPSA on the day the contract is made available. The examples provided in the comments caused us to reconsider the same-day submission requirement.

We believe that the intention of requiring the library to include available contracts and requiring the Secretary make information available on a real time basis, if practicable, was to provide producers with information about contracts in a timely manner to enable the producers to know what terms are available. If packers submit contracts only after final negotiations and do not submit the original contract, then this purpose is defeated. We understand that contract negotiations may result in a contract the same day the contract is made available to producers, which would make submitting the contract, as an example contract, difficult to do on the same day it is made available. We also believe that waiting a week for the submission of the information would not provide adequate notice of the contracts to producers.

The steps involved in collecting and processing the information are time consuming. One of our goals is to minimize the amount of time required to get the information out to the

producers. To minimize the length of time it takes us to process the information and provide the reports, we have automated as much of the process as possible.

Even with the automation of our process, we need to receive the example contracts from the packers in a timely fashion, in order for us to meet the requirement of "real time" reporting as closely as we can. Therefore, the packer must submit example contracts to us within one business day of making the contract available or revising the contract, when the available contract or the change results in a new or replacement example contract. In addition, packers will also be required to notify us of expired contracts or withdrawn contracts by the next business day, to enable us to remove the information from the contract summary reports and keep the information up to date and representative of available and existing contracts. Therefore, we changed the submission requirements specified in paragraph (c) and paragraph (h) of section 206.2 of the regulations to require the packer to submit available contracts within one business day of making the contract available or of a contract change, expiration, or withdrawal.

Other changes to paragraph 206.2(h) included changing "on the day that one of its example contracts no longer represents any existing or offered contracts" to "when an example contract no longer represents any existing or available contract (expired or withdrawn)," adding a sentence to the end of the paragraph to specify that the example contracts and notifications must be submitted within one business day, and combining the first and second sentences of the paragraph and correcting the sentence by changing the word "that" to "if" in the phrase "if the new example contract."

Text of the regulation as proposed	Text of the regulation as revised
206.2(c) <i>What offered contracts do I need to provide and when are they due?</i> 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.	206.2(c) <i>What available contracts do I need to provide and when are they due?</i> After the initial submission, each packer must send GIPSA an example of each new contract it makes available to a producer or producers within one business day of the contract being made available at each plant that it operates or at which it has swine slaughtered that meets the definition of packer in §206.1.

Text of the regulation as proposed	Text of the regulation as revised
<p>206.2(h) <i>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?</i> 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.</p>	<p>206.2(h) <i>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?</i> Each packer must submit a new example contract when contract changes result in changes to any of the four example-contract criteria specified in paragraph (d) of this section and notify GIPSA if the new example contract replaces the previously submitted example contract. Each packer must notify GIPSA when an example contract no longer represents any existing or available contract (expired or withdrawn). Each packer must submit these example contracts and notifications within one business day of the change, expiration, or withdrawal.</p>

*Comment:* For new available contracts, negotiated contracts, and revised contracts, under which circumstances does a packer need to send the contract to GIPSA as an example contract and when is the example contract due? For contract changes, what is required for compliance? Are packers to report modifications to existing contracts as new contracts? This is especially important for verbal contracts because they tend to be modified several times even after initial agreement is reached.

*Response:* The packer must submit an example contract when a new available contract, negotiated contract, or revised contract is not the same as any previously submitted example contracts, as determined by any difference in the four example-contract criteria. The example contract must be submitted

within one business day of a negotiated contract, a contract change, or a contract being made available.

After a contract is made available to a producer and reported to GIPSA as an example contract, there may be changes made through negotiations. When the negotiations are complete and the packer has an accepted contract, the packer will determine if the contract is represented by the same example contract as the available contract, if it is represented by another previously submitted example contract, or if it constitutes a new example contract that must be submitted. If the negotiated contract is represented by a previously submitted example contract that has not expired or been withdrawn, then the packer does not need to submit an example contract for the negotiated contract. If the negotiated contract is not

represented by a previously submitted example contract, then the packer needs to submit the negotiated contract as an example contract. The submission will be a new or replacement example contract based on whether or not the previously submitted example contract is still a valid example contract for any available or existing contracts. The packer will report the example contract as required by section 206.2 paragraph (h).

The following chart is designed to help a packer decide if a new available contract, negotiated contract, or revised contract needs to be submitted as an example contract relative to previously submitted example contracts, even those that have expired or been withdrawn. Specific examples, from the comments, follow the chart.

**BILLING CODE 3410-EN-P**



<u>New available contract:</u> Is the new available contract identical to a previously submitted example contract based on the four example-contract criteria?			
NO		YES	
Send the new available contract as an example contract. The example contract is due the next business day after the new contract is made available to a producer.	Has the previously submitted example contract expired or been withdrawn?	YES	Send the new available contract as an example contract. The example contract is due the next business day after the new contract is made available to a producer.
		NO	The previously submitted example contract will represent the new available contract; the packer does not need to send a new example contract.
<u>Negotiated contract:</u> Is the negotiated contract resulting from an available contract identical to a previously submitted contract based on the four example-contract criteria?			
NO		YES	
Send the negotiated contract as an example contract. The example contract is due the next business day after the contract is negotiated.	Has the previously submitted example contract expired or been withdrawn?	YES	Send the negotiated contract as an example contract. The example contract is due the next business day after the contract is negotiated.
		NO	The previously submitted example contract will represent the negotiated contract resulting from the available contract; the packer does not need to send a new example contract.
<u>Revised contract:</u> Is the revised contract identical to a previously submitted contract based on the four example-contract criteria?			
NO		YES	
Send the revised contract as an example contract. The example contract is due the next business day after the contract is revised.	Has the previously submitted example contract expired or been withdrawn?	YES	Send the revised contract as an example contract. The example contract is due the next business day after the contract is revised.
		NO	The previously submitted example contract will represent the revised contract; the packer does not need to send a new example contract

## &lt;FNP&gt;

In addition, we developed guidelines that are intended to provide clarity to packers for the submission of example contracts. When this final rule is published, we will send a package to each packer required to submit

information when the rule is effective; the package will include a copy of the guidelines. Copies of the guidelines are available through the swine contract library Web site and from the Des Moines Regional Office upon request, and have been included in the

information collection package submitted to OMB for approval.

*Comment:* When should a verbal agreement be reported?

*Response:* The requirement for reporting a verbal contract is the same as for a written contract. A packer must

report a verbal contract to GIPSA within one business day of the contract's availability or change when the available contract or change results in an example contract as determined by the four example-contract criteria.

*Comment:* If a packer makes a verbal contract available to a producer on Monday, is that available contract reported to GIPSA the same day? Similarly, if negotiations result in an accepted contract on the same day, do the original available contract and subsequent modification both have to be reported?

*Response:* If both the available contract and the accepted contract occur on Monday and if the original available contract is still available to other producers, then the packer evaluates the differences, based on the four example-contract criteria, to determine if the available contract and the accepted contract are represented by one or two example contracts and if either of those example contracts have been submitted to GIPSA previously and are still included in the swine contract library as example contract(s) for available or existing contracts.

- If there are two example contracts, and if those two example contracts were not represented by a previously submitted example contract, then the packer reports both the available contract and the accepted contract as example contracts; the example contracts would be due on Tuesday (the next business day).

- If there is one example contract, and if the example contract was not a previously submitted example contract, the packer would report the example contract; it would be due on Tuesday (the next business day).

- If the original available contract was not available to any other producers, then only the example contract for the accepted contract, which occurred on the same day as the contract was made available, would be reported; it would be due on Tuesday (the next business day).

*Comment:* Would the reporting requirement be different if the modification occurred on the Tuesday following the original contract availability on Monday?

*Response:* If the original contract was made available on Monday and the contract is accepted on Tuesday, the reporting requirement may be different.

- If the contract made available on Monday is an example contract, based on the four example-contract criteria, then that example contract is due on Tuesday (the next business day after it was made available) (for discussion

purpose, we will call this Example contract X).

- If the contract made available on Monday were accepted on Tuesday, the packer would determine if, based on the four example-contract criteria, the accepted contract should be represented by a different example contract (for discussion purpose, we will call this Example contract Y). If Example contract Y had not been submitted previously, the packer would report Example contract Y; it would be due on Wednesday (the next business day after it was accepted).

—When the packer submits Example contract Y, if Example contract X is still available to other producers, then the packer will have submitted two example contracts (Example contract X on Tuesday and Example contract Y on Wednesday).

—When the packer submits Example contract Y, if Example contract X was not available to any other producers (the available contract was withdrawn), then Example contract Y, for the accepted contract, would be due on Wednesday and would be submitted as a replacement example contract to replace Example contract X submitted on Tuesday. In this scenario, if the packer wanted to submit only one example contract, the packer could choose to submit Example contract Y earlier than required, by submitting it on Tuesday. Then only Example contract Y would be submitted instead of submitting Example contract X on Tuesday and replacing it with Example contract Y on Wednesday.

*Comment:* If a verbal agreement on a 5-year window contract is renegotiated two weeks later to extend to 7 years and renegotiated the following week regarding a “sort loss” provision, are these three reportable events?

*Response:* No, this example would not result in three reportable events; however, it may be two reportable events. If the verbal agreement on a 5-year window contract was not represented by a previously submitted example contract, then it would be submitted as an example contract (reportable event). The length of contract is a reportable term of the verbal contract, but it is not one of the four example-contract criteria that are used to identify example contracts. Renegotiating the length of the contract from 5 years to 7 years does not change any of the four example-contract criteria. Therefore, in the example, the result of the first renegotiation would not be a second reportable event. Renegotiating the “sort loss” provision

would be a change to one of the four example-contract criteria, the carcass merit premium and discount schedules, therefore, if there was not any other previously submitted example contract that is the same based on the four example-contract criteria, then the renegotiated contract would be reported either (1) as a new example contract if the original verbal agreement was still a valid example contract (available to or existing for another producer) or (2) as a replacement example contract to replace the previously submitted example contract.

*Comment:* If the verbal agreement is put in writing several days afterward, does that constitute a different or unique reportable event?

*Response:* If the verbal agreement is put in writing several days afterward, it would not constitute a different or unique reportable event. That is, assuming the written version and the previously submitted example contract that represents the verbal contract are the same with regard to the four example-contract criteria. The reportable event would be the original available contract and the accepted contract, if either is not represented by a previously submitted example contract.

#### *Packer Reporting Clarifications*

*Comment:* How should futures-based contracts be reported?

*Response:* Packers must report futures-based contracts in the same manner as all other contracts, by identifying example contracts based on the four example-contract criteria and submitting the example contracts to us. For the summarized reports we make available, as specified in the definition of “other market formula purchases,” we will report futures-based contracts as “other market formula purchases.”

In the proposed rule, the packer was responsible for the classification of contracts into categories as part of the packer's preparation for submitting example contracts. To eliminate confusion about how to categorize contracts and to ensure uniformity of the application of categories, we eliminated the requirement that packers categorize contracts, which was specified in the preamble of the proposed rule. Instead, GIPSA will categorize the contract into the “contract type” category. This change will reduce the burden on packers. We will notify the packer of the categories for the example contracts in writing, by phone, or by another method as

needed.<sup>5</sup> The timing and method of notification will vary, in part, depending on how many example contracts we receive that need to be categorized and how long that takes. We will provide each packer with notification of the categories for each example contract at least 2 weeks before the monthly reports are due.

*Comment:* Do packers need to report ledger balances for the swine contract library?

*Response:* No. Contracts with ledgers or accrual accounts will specify the way ledgers or accrual accounts are applied in the contract, for example, the conditions of the ledger and formulas or methods for crediting or debiting ledger accounts. Therefore, we did not make any changes in response to this comment.

#### Reported Contract Information

*Comment:* Only publish information for available and existing contracts; do not publish information about contracts that are no longer available or existing. What contract information will GIPSA publish?

*Response:* We will publish information on available and existing contracts. Within the library that GIPSA is required to maintain, previously available contracts will be maintained, but will not be included in the publicly reported information after the packer notifies GIPSA that the contract is no longer available or has expired.

GIPSA will remove the previously submitted example contract information from the publicly reported information when a packer submits a replacement example contract, or notifies GIPSA that a contract has expired or a contract has been withdrawn. Therefore, we did not make any changes in response to this comment.

*Comment:* Release redacted contracts.

*Response:* The amendment to the P&S Act that creates the swine contract library requires the Secretary to make information concerning contract types, not the contracts themselves, available to producers and other interested parties. We considered the alternative of redacting the identity of persons (including parties to the contract) and any proprietary business information from the contracts and releasing the redacted contracts. Publishing redacted contracts could inadvertently allow the identity of a packer to be determined. For example, it may not be clear that

information on the device used to estimate lean percent would need to be redacted, but if only one packer is using a specific device to estimate lean percent, then the packer could be identified from the contract. If contracts were redacted to a level of detail to ensure that confidentiality is preserved, then very little information would be released. Therefore, we did not make any changes in response to this comment.

*Comment:* Change the format of the information GIPSA reports by linking the reported contract terms to the base price.

*Response:* In designing the contract summary reports, one of our concerns was how to provide as much information as possible and comply with the confidentiality provision in the P&S Act. We concluded that if we linked the terms from a contract together with the base price information, it would be possible to identify an individual packer based on the combination of that information. Therefore, we did not make any changes in response to this comment.

*Comment:* All carcass and noncarcass merit premiums and discounts, not just those on a grid, should be reported by the packer and by GIPSA. For example, contract terms that were categorized as "other contract terms" in the proposed rule, such as length of contract, genetics, type of feed, and medication are specified in contracts as requirements and therefore should be treated as premiums. Contract requirements, other than pricing terms identified in the proposed rule should be reported; for example, genetic requirements to qualify for a contract. Some carcass merit requirements are specifications that are not included on a grid; these specifications should be included in the contract library. Packers should have to report all terms of agreement for a contract so producers can analyze the information and make a marketing decision.

*Response:* As specified in the definition of "noncarcass merit premium or discount" in the regulation, a premium is an increase in the price for the purchase of swine offered by a packer based on a factor other than a carcass characteristic if the actual amount of the premium is known before the purchase and delivery of the swine. If a packer includes an increase in price for any contract term other than a term that specifies a carcass characteristic, it will be treated as a premium.

It appears that there was some confusion about what we will publish in the swine contract library. The sample report shown in the proposed rule was

a one-page sample highlighting the types of information that we proposed to publish. As we stated in the preamble of the proposed rule (65 FR 53664):

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.

It is our intention to publish as much information from the contract terms as possible. In addition to the price information, the sample showed categories for Quality and Weight Restrictions and Other General Contract Terms. Due to the large volume of information that will be published and for ease of access to the information on the Web site, we changed the format in the following manner:

- In the proposed rule, the sample report showed the base price determination as a combination of five to six pieces of information (65 FR 53663). This was intended to show a variety of the pieces of information that are used to determine the base price for a contract. Generally, the base price is calculated based on a reported price. To simplify the presentation of the base price determination information, on the Web site, base price determination will be presented as a list showing combinations of four key pieces of information, which will identify the reported price used. The remaining details used to determine each of the base prices will be provided under the unique combinations of those four key pieces of information. The four key pieces of information are:

—*Name:* The title or reference to a published or private report (for example, the Agricultural Marketing Service (AMS) Western Cornbelt Lean Hog, plant price, AMS Omaha Corn, or CME lean hog).

—*Version:* Typically, named reports will have more than one version; for reports released more than once a day, the version is the release time

<sup>5</sup> The regulation will require a total of 33 pork packing companies (packers) to report for 53 plants that have the slaughtering capacity specified in the definition of "packer" in section 206.1, based on data including 2002, the most recent year for which complete data are available.

of the named report (for example, open, close, mid-session, or 10 a.m.).

—*Time period*: Daily and weekly reports are available and more than one report may be used to calculate the base price. The time period specifies the day(s) or week(s) of the version of the report, that will be used to calculate base price (for example, Day prior to delivery, previous week average, or 20 week average).

—*Series*: On the version of the report, the series will identify the specific number, dollar value, from the report (for example, weighted average, top, or mid-point).

- The sample report in the proposed rule showed two tables for premium and discount schedules, which showed aggregate ranges for the premiums and discounts based on range of lean percent and carcass weight. The premium and discount schedules will be presented in a consistent manner and will show actual adjustments.

- The sample report showed one noncarcass merit premium. Noncarcass merit premiums and discounts will be grouped into categories to show the various amounts for the same noncarcass premium and discount category.

- The sample report showed generalized statements concerning how a ledger account would be handled. Provisions in the application of ledger section will be grouped into four subcategories: Window/Target Price, Window Conditions, Limits on Ledgers, and Termination of Ledger.

- The sample report showed two items each for two categories for other provisions of contracts. Other provisions of contracts will include all other provisions, grouped into categories to show similar contract terms together.

The “other provisions” section of the contract summary report will include contract terms from all example contracts for each contract type within a region related to quality and weight, purchase conditions and payment, volume and delivery, business practices, and general contract terms. This will be an aggregation from all example contracts in the region and, to ensure confidentiality, will not be linked to other contract terms from example contracts. The “quality and weight” section will include information from contract terms specifying drug usage/ withdrawal, genetics, nutrition, carcass evaluation programs, changes in evaluation, quality improvement programs, lean percentage or yield

requirements, target weights and weights used for payment, off quality hogs, and meat quality or usability. The “purchase conditions and payment” section will include information from contract terms specifying calculation of payment, changes in payment calculation, transmittal of payment, penalties for failure to meet standards, and other payment conditions. The “volume and delivery” section will include information from contract terms specifying scheduling and delivery conditions, volume requirements, and right of first refusal. The “business practices” section will include information from contract terms specifying facilities, records and financial soundness requirements, transfer of title, and other business conditions. The “general contract terms” section will include information from contract terms specifying assignment of agreement, confidentiality, dispute resolution, enforcement, force majeure, indemnity, notice requirements, term of the agreement, termination of the agreement, review and renewal of the agreement, and other general contract terms.

Packers will submit example contracts to GIPSA. The four example-contract criteria used to identify example contracts focuses on price determining contract terms. Therefore, submitted example contracts will provide the full range of price determining contract terms for all available and existing contracts. The example contracts may not provide all of the other provisions (non-price determining contract terms) for all available or existing contracts. GIPSA will publish as much information on the non-price determining contract terms as possible while maintaining confidentiality. Therefore, we did not make any changes in the rule in response to this comment, however the contract summary report has been changed as previously described.

*Comment*: Use uniform measurements and terms for published contract information, such as the range of percent lean, base price, and carcass weight. Report the base price on a carcass weight basis on a consistent weight basis or have the weight clearly labeled on the report. Reports must foster easy comparison.

*Response*: To the extent that the packers use uniform measurements and terms, we will report uniform measurements and terms. We will receive example contracts from packers and publish a summary of contract terms based on those example contracts. Different packers use different

measurements and terms, which will be reported in the contract summaries.

The information from the swine contract library will provide producers with information from available and existing contracts. We will publish as much information from the contract terms as possible, so producers can see the variety of terms that packers are making available or using. We agree with the commenter that the information must be presented in a way that will foster easy comparison; given the quantity of information and the limitations of the confidentiality protections, we have designed the summary reports to foster easy comparison by grouping like information together into relevant categories of contract terms. We believe that the greatest value in the information from contract terms will be gained by providing producers the ability to see contract terms in as close to the original content and language as possible. In that way, producers will better understand the contract terms that are actually available. To prepare reports that would attempt to convert the contract terms to uniform measures would require conversion factors that were constantly updated and if we waited to assure the use of correct conversion factors, we could not present the information in real-time. Additionally, we could inadvertently change the content or lose information. Therefore, we did not make any changes in response to this comment.

*Comment*: Producers are unlikely to identify the contract provisions of interest and approach packers within the region to negotiate a contract. Producers looking for a contract with a packer generally have to take one of the contracts currently available. They may look for different available contracts, but individual producers generally don't have the bargaining power to get packers to incorporate beneficial provisions into a newly drafted contract. For the reported contract information to be beneficial it must provide as complete a picture of each contract available as possible.

*Response*: Amendments to the P&S Act require us to implement a swine contract library and make information available. In addition, it requires us to protect the confidentiality of the information. To meet those requirements, we are providing as much information as possible while maintaining confidentiality. We believe that there are additional benefits to the availability of the information, which we discussed in estimating the benefits for the implementation for this rule.

The purpose of the swine contract library is to provide producers, packers, and other market participants with information that can be readily understood with respect to swine marketing contracts. By providing this information, the swine contract library reports are intended to provide more transparency about contract terms and equalize access to market information for all market participants.

Because of the lack of information in the past, producers have not had access to enough information to identify the variety of contract terms being made available by packers. The publicly available information from the contracts will provide producers with significantly more information than they had in the past about the variety of contract terms. Producers will be able to see the full range of contract terms being made available by the packers in a region, whereas in the past they might only have known about the terms a packer made available to them. With more information they will be better equipped to negotiate contracts. Therefore, we did not make any changes in response to this comment.

*Comment:* Require packers to report contracts by the state in which they are available or are in force (producer location). Reporting information in this way may be more useful to producers than reporting by the location of the plant.

*Response:* We will require each packer to report contracts by the plant location. We understand that some producers may find it useful to review information for contracts that are available to producers located in their geographic region, or specifically their state. Most producers know where plants are located in relationship to the production site. If a producer is willing to transport animals a significant distance, that producer will be able to obtain information from the area to which he is willing to ship. The contract terms and prices are likely to be associated to plants. Packers do not tend to make contracts available based on producer location, rather, they make contracts available based on the plant location. That is, a packer specifies contract terms, such as base price determination, based on market conditions prevailing at the plant. The packer does not distinguish where the animal originated, only where it will be slaughtered.

In planning the swine contract library summary report, we considered various ways in which we could present meaningful information to producers. Among other things, we considered the geographic areas for which we publish

information. One of the criteria we use to meet the confidentiality requirements is that we will not publish information from fewer than three packers in a region. If we were to publish information by state, then we would encounter greater constraints about information that we publish because there are states in which only one or two packers operate. Given the requirements for confidentiality, publishing information by multi-state regions allows us to publish more information.

We decided to report the contract information on a regional basis, based on the plant locations, to provide as much price information from the contracts as possible under the confidentiality protections. This method of providing information informs producers and other interested persons that one of the packers that have hogs slaughtered at a plant in that region has an available or existing contract that contains some of the terms published in the summary for that region.

In addition, we will not receive information from packers to show where every contract is available based on producer locations. We considered this alternative, but determined that it would add burden to the packers without providing additional information. Specifically, it would have been time consuming for packers to provide the additional information and for us to receive and process the additional information. By using plant locations, there is a one-to-one relationship between the example contract and the plant location that allows us to publish the information from each contract to a single region. If, however, producer locations had been used, we would have to know each state in which the packer is making the contract available to producers, and then publish the contract information for each of those states. If we asked the packer to identify producer locations for each example contract, and if all producer locations were not immediately known to the packer, the packer would need additional time to collect and provide that information and then more time would be required for us to receive and process the producer locations as the locations became known. If we had required packers to submit producer locations for all the contracts that the example contract represented, then a potential negative result could have been packers limiting the availability of contracts to producers in a specific location.

We considered all of these factors and because changing the report summaries to producer locations would not result

in the release of additional information, we determined that it would not be worth the additional burden and costs that would have been required. Therefore, we did not make any changes in response to this comment.

#### *Confidentiality*

*Comment:* There is no reasonable expectation of privacy with regard to the information to be available in the library and packers, for the most part, have not attempted to keep contracts confidential.

*Response:* The amendment to the P&S Act that requires us to establish and maintain the swine contract library specifically requires us to protect the identity of persons, including parties to contracts reported to us by packers and to protect proprietary business information from those contracts. Section 222(c) of the P&S Act specifies that the reporting requirements of the swine contract library are subject to the protections provided under section 251 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1636), which was initiated by the LMRA. We must comply with the statutory requirement. Therefore, we did not make any changes in response to this comment.

*Comment:* How will confidentiality be maintained? Do not identify any individual packer; do not include the term "from each packer," as used in the proposed rule, in the final rule. It is important to maintain confidentiality when reporting contract information, including proprietary information and the identity of packers and producers.

*Response:* To maintain confidentiality, as required by the amendment to the P&S Act, we will publish information about the contract terms and not the contracts themselves. Among the confidentiality provisions is the requirement to ensure that confidentiality is preserved with respect to the identity of the parties to the contracts. Therefore, our summaries and reports will not identify the parties to the contract (packer names or producer names).

As stated in the proposed rule (65 FR 53669), "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" for the particular report.

To ensure that confidentiality is preserved regarding the identities of persons, including parties to a contract, and the proprietary nature of the information included in the contracts, we will present the contract library information without indications about

how the contract terms relate to each other within an example contract. The contract library information will provide a summary of the contract terms that are available in each region.

The use of the term "from each packer" in the proposed rule came directly from the amendment to the P&S Act. Among other things, new section 222(d) of the P&S Act requires the Secretary to provide specific information in a monthly report, including information on the contracts types available from each packer. The information that we will report includes the contracts types available from packers in a specific region. Each packer that meets the definition of packer in section 206.1 must submit example contracts and volume information to GIPSA. However, the published reports will not identify the names of packers that submitted contracts to GIPSA. Therefore, we did not make any changes in response to this comment.

*Comment:* If there are so few packers within a region that information cannot be reported due to the confidentiality protections, it may be an indication that there may be too great a concentration of market share in that region. GIPSA should investigate whether a packer is taking actions in the region that violate the P&S Act, specifically, actions that have the purpose or effect of creating a monopoly in violation of section 202 of the P&S Act.

*Response:* We routinely investigate packers for potential violations of the P&S Act. If any information received for the swine contract library suggests a potential violation of the P&S Act, we will investigate to determine if a violation of the P&S Act has occurred or is occurring. Therefore, we did not make any changes in response to this comment.

#### Outreach

*Comment:* Develop a comprehensive producer education or outreach plan to inform producers of the reports, their content, how they can be used, and where they can be accessed. Add other avenues of information dissemination because some pork producers lack Internet access.

*Response:* GIPSA will use a variety of methods to disseminate information about the swine contract library, with the intent of making every potential customer aware of the swine contract library, its capabilities and availability. A press release containing basic information about the swine contract library will be issued to national and local press markets, to trade and industry groups for publication, and to USDA agencies and offices that have

contact with producers and other interested groups and individuals who might benefit from the information in the swine contract library. GIPSA will make use of public service announcements distributed through unpaid media, USDA agency newsletters for producers and other stakeholders, and radio to inform producers that the swine contract library reports are available and where to find them. GIPSA will provide information about the swine contract library when meeting with trade and industry groups for dissemination to members, and directly to individuals in meetings as appropriate.

The swine contract library reports will be available to customers and the general public on the Internet, posted on the GIPSA Web site, linked to other USDA Web sites, and available in hard copy at GIPSA's Packers and Stockyards Programs headquarters in Washington, DC, and at the regional office located in Des Moines, Iowa. The swine contract library Internet site is compliant with Section 508 of the Rehabilitation Act<sup>6</sup> for those customers using computer software requiring adherence to Section 508 standards for alternate use. GIPSA will coordinate customer access to the services of the USDA Target Center<sup>7</sup> for those who require alternative formats of the swine contract library reports.

GIPSA is working with other USDA agencies that have an active presence at the local level to address the difficulties that may be faced by some producers who would benefit from the information contained in the swine contract library, but do not personally have immediate access to the Internet. Many communities have libraries with Internet access and capabilities that provide such service to residents. Producers can use these services for access to the swine contract library. In addition, while GIPSA received four comments on the proposed rule addressing Internet access to the swine contract library, half (two) endorsed this method of information delivery, one pointed out the need for an active outreach and communications effort

<sup>6</sup> See 29 U.S.C. 749d for section 508 of the Rehabilitation Act.

<sup>7</sup> The U.S. Department of Agriculture established the Technology Accessible Resources Gives Employment Today (TARGET) Center, to support the USDA with assistive technology and ergonomic solutions. As part of the USDA's commitment to ensure compliance with Section 508 requirements that all electronic and information technology be accessible to persons with disabilities, the USDA TARGET Center is the contact point and resource center for converting USDA information and documents into alternative formats. Alternative formats include Braille, large print, video description, diskette, and audiotape formats.

supporting this method of information delivery, and only one stated that Internet access alone was not sufficient. (For additional information, contact GIPSA using the phone number, address, or e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.) No changes were made to the rule based on these comments.

*Comment:* Swine producers need to understand the contract library information. Simplify everything possible. Test the reports with pork producers.

*Response:* We agree with the commenter that producers need to understand the information from the swine contract library. Wherever possible, we have made adjustments to the presentation of the information to simplify it and make it understandable. As the information is made public and we hear from producers we will continue to make changes where possible to simplify the presentation of the information. As stated in the proposed rule, we will "conduct ongoing analyses of the data and information obtained from packers, and would explore ways to increase the usefulness of the data and information" (65 FR 53671).

Throughout the development process, one of the considerations was the best way to present the information to make it understandable and usable. One of the difficulties is that contracts, and specifically individual contract terms, can be difficult to understand. The purpose of the swine contract library is to provide information to producers and other interested parties about the contract type's terms available from packers; it does not replace legal or other business advice for understanding contract terms or how the terms apply to an individual producer's business.

Another difficulty was the volume of information we expect to receive and summarize to make publicly available. We have simplified the summarization, presentation of, and access to the information where possible. We will reduce the volume of information by eliminating redundancies, where possible; for example, contract terms that show up in multiple contracts will be included once in the summary of contract terms. To make it easier to get to specific information, we organized the reports into sections.

The contract summary report of contract terms available within a region consists of four sections. The "determination of base price" section includes terms related to how base price is set. The "premiums and discounts" section includes terms related to

adjustments to the base price as determined by carcass and noncarcass traits. This section includes carcass merit premium and discount schedules, grading devices and formulas, and noncarcass merit premiums and discounts, specifying the dollar or percentage adjustment (or range) of the premium or discount. The "application of ledger" section includes terms related to the application and use of ledger or accrual accounts. This section includes information from contract terms specifying window/target price, window conditions, limits on the ledger, and termination of ledger. The "other provisions" section includes terms related to any item other than those listed above, such as quality and weight, purchase conditions and payment, volume and delivery, business practices, and general contract terms.

We will group like information and list it with descriptive headings. For example, the section that provides the determination of base price information will organize the base prices by several key pieces of information (Name, Version, Series, Time Period) for example, Iowa/Southern Minnesota, Mid-Session, Weighted Average, Day of Delivery. Additional details that complete the determination of base price will be listed with these key pieces of information. This approach will allow users to see the range of base price options.

When we tested the summary report we involved individuals within USDA who have backgrounds in and knowledge of hog marketing, including some former hog producers. Where possible, within the confidentiality requirements, we made changes based on their suggestions to simplify the presentation of the information and make the information more accessible and understandable.

#### *Availability of Contracts*

*Comment:* Must packers make contracts available to every producer?

*Response:* No. This regulation requires packers to submit example contracts to GIPSA; neither the amendments to the P&S Act that created the swine contract library or this regulation implementing it imposes requirements for how or to whom a packer makes a contract available. Packers must continue to comply with the requirements in the P&S Act and related regulations. We did not make any changes in response to this comment.

#### *Enforcement*

*Comment:* Does GIPSA intend to audit the estimates of the number of

contracted swine that packers must submit in monthly reports?

*Response:* Yes, on an ongoing basis, GIPSA will monitor and review the accuracy of the estimates of the number of contracted swine that packers specify in the submitted monthly reports. In addition, we will monitor and review the example contract submissions and the monthly reports for completeness, consistency, and accuracy. As specified in the proposed rule, packers must maintain records to verify the accuracy of the information required to be reported. Therefore, we did not make any changes in response to this comment.

*Comment:* What will the penalty be for not including carcass or noncarcass premiums and discounts in the reported contract?

*Response:* The reported example contract must be complete and, therefore, must include all carcass and noncarcass premiums and discounts associated with the example contract. As specified in new section 222(e) of the P&S Act, to willfully fail or refuse to provide accurate information constitutes a violation of the P&S Act. Excluding carcass or noncarcass premiums or discounts that apply to the contract from the reported example contracts would constitute a violation of Title II of the P&S Act. 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 a provision of Title II of the P&S Act. Section 203 of the P&S Act also specifies the sanction that may be assessed if the Secretary determines that a violation has occurred.<sup>8</sup> Therefore, we did not make any changes in response to this comment.

#### *State Laws*

*Comment:* Minnesota, Iowa, and several other Corn Belt States have forbidden contract clauses requiring contract terms to be kept confidential. In addition, Minnesota requires packers to file contracts. Will these State laws be preempted?

*Response:* No. The state statutory requirement that there be no confidentiality clause in contracts will not be preempted, but GIPSA will comply with the P&S Act amendment requirement that requires confidentiality of certain information from contracts submitted to GIPSA for the swine contract library.

<sup>8</sup> Any such violation will be subject to an order to cease and desist from continuing such violation and a civil penalty of not more than \$11,000 for each such violation.

Implementation of the swine contract library will not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with the statute. The state laws mentioned in the comment do not appear to present an irreconcilable conflict with the statute or this regulation which implements the statute. We did not make any changes in response to this comment.

#### *Evaluate Contracts*

*Comment:* Knowing the provisions of contracts and being able to differentiate the value of various contracts and contract terms are two different things. Will GIPSA or some other USDA agency provide a test or worksheet that a producer can use to evaluate contracts in the future?

*Response:* The purpose of the swine contract library is to provide information to producers and other interested parties about the contract types and terms available from packers; it will not provide guidance for evaluating contracts. However, through the GIPSA Web site on the Internet, we provide links to information that may help producers evaluate livestock and poultry contracts. In addition, through the AMS Web site on the Internet, AMS provides information on contracting in agriculture and making the right decisions about contracting. We did not make any changes in response to this comment.

#### **Summary of Changes to the Rule**

As discussed above, in response to comments, we made changes to the rule. Also, we made a number of additional changes to improve consistency, clarity, and make corrections. All of the changes to the rule are summarized below.

In response to comments, we made the following changes:

- We eliminated the use of the words "offer," "offers," "offered," and "offering." We replaced the use of the word "offer" as in "new offers" with "contracts made available" or "available contracts" as appropriate. These changes appear in the definition of the term "noncarcass merit premium or discount," paragraphs 206.2(c) (title and text), (h), 206.3(c)(1), (c)(2), and (g)(3)(ii).

- We changed the term "type of contract" to "contract type." These changes appear in the definition of the term and in paragraphs 206.2(f), 206.3(c)(2), (3), (5), (g)(iii), and (v). Other changes included correcting the definition of "contract type" by adding a comma after the word packer in the first sentence, in paragraph 206.3(g)(3)(iii), and correcting the

sentence by inserting the word “the” in front of the phrase “total number of swine.”

- We changed the rule to require that packers submit new example contracts and notification of changes to GIPSA within one business day after the availability of the contract or the day the change was made. These changes appear in paragraphs 206.2(c) and (h). We made the following related changes in paragraph 206.2(h): We changed “on the day that one of its example contracts no longer represents any existing or offered contracts” to “when an example contract no longer represents any existing or available contract (expired or withdrawn)” and we added a sentence to the end of the paragraph to specify that the example contracts and

notifications must be submitted within one business day. Other changes made to paragraph 206.2(h) included combining the first and second sentences of the paragraph and correcting the sentence by changing the word “that” to “if” in the phrase “if the new example contract.”

We revised the definition of “packer” in section 206.1 to apply to a packer purchasing at least 100,000 swine per year. Other changes to the definition include deleting the phrase “or firm” and the word “would” from the definition of “packer.”

The proposed rule inconsistently referred to the packers in the singular and plural and by personal and impersonal pronouns. We changed references to packers throughout to

make them consistent as follows: We changed plural references to the singular, “packers” became “each packer” and we changed personal pronouns to impersonal pronouns, “they” became “it.” Other words in the sentences were revised as needed based on these changes. For example, in paragraph 206.3(c), “packers file” was corrected to “each packer files.” These changes appear in paragraphs 206.2(a), (e), and (h), and paragraphs 206.3(a), (b), (c), (e), (f), and (f)(2). A specific example of this change is shown in the following table. Another change we made in paragraphs 206.2(e)(1), (2), (g), 206.3(c), (f)(1), (2), and (g)(1) was correcting the regional office address by replacing “the GIPSA Regional Office at Room 317” with “USDA GIPSA, Suite 317.”

Text of the regulation as proposed	Text of the regulation as revised
206.3(f)(2) <i>Printed report.</i> Packers may deliver their printed monthly report to the GIPSA Regional Office at Room 317, 210 Walnut Street, Des Moines, IA 50309.	206.3(f)(2) <i>Printed report.</i> Each packer may deliver its printed monthly report to USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309.

For consistency and clarity, we revised references to the criteria used to identify example contracts to read “the

four example-contract criteria.” These changes appear in paragraphs 206.2(d)

and (h). A specific example of this change is shown in the following table.

Text of the regulation as proposed	Text of the regulation as revised
206.2(d) <i>What criteria do I use to select example contracts?</i> 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:	206.2(d) <i>What criteria do I use to select example contracts?</i> For purposes of distinguishing among contracts to determine which contracts may be represented by a single example, contracts will be considered to be the same if they are identical with respect to all of the following four example-contract criteria:

Paragraph 206.2(e) was revised to add the option for electronic submission of example contracts and notifications. We changed “must send” to “may submit” with specification of two options for submission, and we created two

subparagraphs to specify the two methods for submitting example contracts and notifications. For clarity, we changed the title of the paragraph to more correctly describe the requirements provided in the paragraph.

In addition, we added “and notifications” after “submit the example contracts” and changed “required by paragraphs (b) and (c) of this section” to “required by this section.”

Text of the regulation as proposed	Text of the regulation as revised
206.2(e) <i>Where do I send my contracts?</i> 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.	206.2(e) <i>Where and how do I send my contracts?</i> Each packer may submit the example contracts and notifications required by this section by either of the following two methods: (1) <i>Electronic report.</i> Example contracts and notifications required by this section may be submitted by electronic means. Electronic submission may be by any form of electronic transmission that has been determined to be acceptable to the Administrator. To obtain current options for acceptable methods to submit example contracts electronically, contact GIPSA through the Internet on the GIPSA Web site ( <a href="http://www.usda.gov/gipsa/">http://www.usda.gov/gipsa/</a> ) or at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309. (2) <i>Printed report.</i> Each packer that chooses to submit printed example contracts and notifications must deliver the printed contracts and notifications to USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309.

We changed “swine packer marketing contract(s)” references to “swine contract library” everywhere it

appeared. The term “swine packer marketing contract” was used throughout the proposed rule to be

consistent with the title of the amendments to the P&S Act. These regulations implement the swine



contract library as required by the Swine Packer Marketing Contract subtitle of the P&S Act. We believe that "swine contract library" is more accurate than the phrase "swine packer marketing contracts." The information from the contract library will be available publicly, however, the contracts will not be released. Therefore, to avoid confusion, we changed all of the references. These changes appear in the titles of Part 206,

section 206.2, and paragraphs 206.2(f) and (g), and in the text of paragraph 206.3(a). Examples of this change are shown in the following table. Similarly, we changed "swine packer marketing contract information" to "swine contract information" in 206.2(a). In addition, for consistency, we deleted the words "swine packer marketing contract" from the title of paragraph 206.3(a).

We changed the last sentence of paragraph 206.2(g) by deleting the phrase "and/or examples of new contracts" because the word "information" includes example contracts, and deleting the phrase "in Des Moines, Iowa," which was immediately followed by the office address in the proposed rule and therefore redundant.

Text of the regulation as proposed Part 206—Swine Packer Marketing Contracts	Text of the regulation as revised Part 206—Swine Contract Library
206.2 Swine packer marketing contract library. 206.3(a) <i>Do I need to provide swine packer marketing contract monthly reports?</i> 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.	206.2 Swine contract library. 206.3(a) <i>Do I need to provide monthly reports?</i> Each packer, as defined in §206.1, must provide information for each swine processing plant that it operates or at which it has swine slaughtered that has the slaughtering capacity specified in the definition of packer.

In paragraph 206.2(f), we changed the second sentence to eliminate redundancy. Both the first and second sentences, as proposed, began "GIPSA will summarize." We changed the second sentence to delete the phrase and to indicate when the first summary report will be made available. In addition, we changed the end of the last

sentence from "as to avoid divulging data on individuals firms" operations and the parties to contracts will not be identified" to "to provide as much information as possible while maintaining confidentiality" to refer to confidentiality in a consistent manner in this document. We also made this change in paragraph 206.3(g)(2). We

changed "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." to "Geographic regions will be defined in such a manner to provide as much information as possible while maintaining confidentiality and may be modified from time to time."

Text of the regulation as proposed	Text of the regulation as revised
206.2(f) <i>What information from the swine packer marketing contract library will be made available to the public?</i> 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.	206.2(f) <i>What information from the swine contract library will be made available to the public?</i> GIPSA will summarize the information it has received on contract terms, including, but not limited to, base price determination and the schedules of premiums or discounts. GIPSA will make the information available by region and contract type as defined in §206.1, for public release one month after the initial submission of contracts. Geographic regions will be defined in such a manner to provide as much information as possible while maintaining confidentiality.
206.3(g)(2) 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.	206.3(g)(2) Information in the report will be aggregated and reported by geographic regions. Geographic regions will be defined in such a manner to provide as much information as possible while maintaining confidentiality and may be modified from time to time.

In paragraph 206.2(b), the requirement is for the packer to send the example contracts to GIPSA; it is not a packer's responsibility to also ensure that we receive the example contracts.

Therefore, we revised the sentence to remove the phrase "and the Grain Inspection, Packers and Stockyards Administration (GIPSA) must receive." To add clarity, we changed the title of paragraph 206.3(b). The new title more

correctly describes the requirements provided in the paragraph. Other changes included abbreviating "Iowa" to "IA" and adding the timing for the beginning of the monthly reports.

Text of the regulation as proposed	Text of the regulation as revised
206.3(b) <i>What information do I need to provide and when is it due?</i> 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.	206.3(b) <i>When is the monthly report due?</i> Each packer must send a separate monthly report for each plant that has the slaughtering capacity specified in the definition of packer in §206.1. Each packer must deliver the report to the GIPSA Regional Office in Des Moines, IA, by the close of business on the 15th of each month, beginning at least 45 days after the initial submission of example contracts. The GIPSA Regional Office closes at 4:30 p.m. Central Time. If the 15th day of a month falls on a Saturday, Sunday, or federal holiday, the monthly report is due no later than the close of the next business day following the 15th.

To correct a reference, in paragraph 206.3(f) we changed “monthly contract information” to “monthly report.” In addition, we added “required by this section.”

Text of the regulation as proposed	Text of the regulation as revised
206.3(f) <i>Where and how do I send my monthly contract information?</i> Packers may submit their monthly reports by either of the following two methods:	206.3(f) <i>Where and how do I send my monthly report?</i> Each packer may submit monthly reports required by this section by either of the following two methods:

To add clarity, we changed the title of paragraph 206.3(c). The new title more correctly describes the requirements provided in the paragraph. Other changes included correcting the form number reference in paragraph 206.3(c) and including information on where to obtain the form.

Text of the regulation as proposed	Text of the regulation as revised
206.3(c) <i>How do I make a monthly report?</i> The monthly report that packers file must be reported on PSP Form 341 and must provide the following information:	206.3(c) <i>What information do I need to provide in the monthly report?</i> The monthly report that each packer files must be reported on Form P&SP-341, which will be available on the Internet on the GIPSA Web site ( <a href="http://www.usda.gov/gipsa/">http://www.usda.gov/gipsa/</a> ) and at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309. In the monthly report, each packer must provide the following information:

In paragraph 206.3(e), the first sentence clearly states the requirement. The second sentence, as proposed, neither added requirements nor clarity. Therefore, we determined that the second sentence was unnecessary and deleted it to simplify the paragraph.

Text of the regulation as proposed	Text of the regulation as revised
206.3(e) <i>When do I change previously reported estimates?</i> 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.	206.3(e) <i>When do I change previously reported estimates?</i> 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.

In paragraph 206.3(f)(1), we deleted “e-mail or any other” because during development of the reporting process we determined that we could not offer an e-mail submission option that would be secure and guarantee the confidentiality of the files submitted during the transmission process. Instead, we developed a secure Web site so that we could offer the option of electronic submission.

Text of the regulation as proposed	Text of the regulation as revised
206.3(f)(1) <i>Electronic report.</i> 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 ( <a href="http://www.usda.gov/gipsa/">http://www.usda.gov/gipsa/</a> ) or at the GIPSA Regional Office at Room 317, 210 Walnut Street, Des Moines, IA 50309.	206.3(f)(1) <i>Electronic report.</i> Information reported under this section may be reported by electronic means, to the maximum extent practicable. Electronic submission may be by any form of electronic transmission that has been determined to be acceptable to the Administrator. To obtain current options for acceptable methods to submit information electronically, contact GIPSA through the Internet on the GIPSA Web site ( <a href="http://www.usda.gov/gipsa/">http://www.usda.gov/gipsa/</a> ) or at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309.

We changed the word “homepage” to “Web site” each time it appeared. The information from the swine contract library will be available on the GIPSA Web site, however it will not appear directly on the GIPSA homepage. Users will initially find a direct link to the information on the GIPSA homepage, but in the future, as the GIPSA Web site goes through changes and updates, the link may not continue to appear on the homepage if there is another logical place for it to appear. This change appears in paragraphs 206.2(g) and paragraphs 206.3(f)(1) and (g)(1). Other changes to paragraph 206.3(g)(1) included changing the first sentence to more correctly describe the available information by changing “contract types and estimated deliveries” to “estimated deliveries by contract type.”

In paragraph 206.3(c)(1), we revised the title to more correctly describe the requirements provided in the paragraph. We revised the first sentences of paragraphs 206.3(c)(1) and (2) to clarify that they provide definitions for existing and available contracts, respectively, for which each packer must submit

estimates on monthly reports.<sup>9</sup> In addition, we revised the second and third sentences to combine text to more directly and correctly state the requirement. As proposed, the second sentence could have been misleading; the requirement is not to report the types of contracts, but rather to report the number of estimated swine to be delivered. The revised sentence focuses on the estimates to be reported, it does not change the requirement to report those estimates. Other changes included in paragraph 206.3(c)(2) included

changing the phrase “for purchase” to “for the purchase” and in paragraphs 206.3(c)(1) and (c)(2) changing “the types of contracts” to “contracts.” In the proposed rule, we used the terms “expansion provisions” and “expansion clauses” to mean the same thing. In a contract, the expansion clause specifies the possibilities for increase of a quantity. For consistency, in the title of paragraph 206.3(c)(4) and the text of paragraphs 206.3(c)(4), (4)(iii), (5), (g)(3)(iv), and (v), we revised “provisions” to “clauses.” For

consistency, in paragraphs 206.3(c)(4)(i) and (ii), we revised “contract terms” to “clauses.” A specific example of this change in paragraph 2.6.3(c)(4) is shown in the following table. Other changes in section 206.3 included correcting the sentence in paragraph (c)(5) by inserting the word “of” in front of the phrase “the types of expansion clauses” and added “for all existing contracts” to the second sentence for clarity and in paragraph 206.3(g)(3)(iv) changing the word “ensuing” to “following” for consistency and plain language.<sup>10</sup>

Text of the regulation as proposed	Text of the regulation as revised
<p>206.3(c)(4) <i>Expansion provisions.</i> 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:</p> <ul style="list-style-type: none"> <li>(iii) Contract terms that allow for a range of the number of swine to be delivered;</li> <li>(iii) Contract terms that require a greater number of swine to be delivered as the contract continues;</li> <li>(iii) Other provisions that provide for expansion in the numbers of swine to be delivered.</li> </ul>	<p>206.3(c)(4) <i>Expansion clauses.</i> Any conditions or circumstances specified by clauses in any existing contracts that could result in an increase in the estimates specified in paragraph (c)(3) of this section. Each packer will identify the expansion clauses in the monthly report by listing a code for the following conditions:</p> <ul style="list-style-type: none"> <li>(iii) Clauses that allow for a range of the number of swine to be delivered;</li> <li>(iii) Clauses that require a greater number of swine to be delivered as the contract continues;</li> <li>(iii) Other clauses that provide for expansion in the numbers of swine to be delivered.</li> </ul>

To specify that estimates reported in the monthly reports come from contracts and not from contract types, in the title of paragraph 206.3(d), we changed “type of contract” to “contract.” In addition, for clarity with the wording used throughout the regulations, we changed the word “head” to “swine.”

Text of the regulation as proposed	Text of the regulation as revised
<p>206.3(d) <i>What if a type of contract does not specify the number of head committed?</i></p>	<p>206.3(d) <i>What if a contract does not specify the number of swine committed?</i></p>

In the proposed rule, the authority citation included 7 U.S.C. 198, 198a, and 198b, which are the sections of the U.S. Code in which the sections of the P&S Act that require the establishment of the swine contract library are codified. We corrected the authority citation by replacing those citations with Section 941 of Public Law 106–78, 113 Statute 1135, which is the section of the Livestock Mandatory Price Reporting Act that requires regulations to implement the swine contract library.

We added the OMB control number at the end of sections 206.2 and 206.3 to show the OMB approval for the collection of information required by the swine contract library regulations, which OMB has approved concurrently with the approval of the final rule.

**Summary of Swine Contract Library Final Rule**

*Who must provide contract information?* The regulations apply to a packer purchasing at least 100,000 swine per year and slaughtering swine

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

- (1) A swine processing plant that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years, with the average based on those periods in which the plant slaughtered swine; or
- (2) Any swine processing plant that did not slaughter swine during the immediately preceding 5 calendar years that has the capacity to slaughter at least 100,000 swine per year, based on plant capacity information.

Throughout this document, references to “packers” refer to the packers that are required to report under the swine contract library regulations. Throughout this document, references to “plants” refer to the plants at which the swine are slaughtered for which the packers are required to report. Currently, most of the packers required to report slaughter swine at a plant that the packer owns. In a few cases, the packer required to

report has the swine slaughtered at a plant it does not own.

*What contracts will packers need to provide?* Each packer must send GIPSA example contracts for available and existing contracts with a producer (or producers) for the procurement of swine for slaughter. For a packer using more than one plant, the packer must submit a separate package of example contracts for each plant that has the slaughtering capacity specified in the definition of “packer.”

For verbal contracts, packers must 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.

As specified in section 206.2(a), (b), and (c) of the regulations, each packer must file an initial submission of example contracts currently in effect or available and subsequent submissions with example contracts made available at each plant at which the packer slaughters swine.

<sup>9</sup>The table showing the changes from the proposed rule in paragraphs 206.3(c)(1) and (c)(2)

is in the Discussion of Comments section of this document.

<sup>10</sup>The table showing the changes from the proposed rule in paragraphs 206.3(c)(5) is in the Discussion of Comments section of this document.

The initial submission of example contracts is due the first business day of the month following the determination that the plant has the slaughtering capacity specified in the definition of "packer." GIPSA has made that determination for plants that are currently in operation; in the future as new plants open, the determination will be made as the information is available. When this final rule is published in the **Federal Register**, GIPSA will notify each packer in writing if it is required to submit information, and how and when to submit, for the swine contract library. To submit information for the swine contract library, example contracts and monthly reports, packers may submit hard copies or submit electronically via the swine contract library Web site. For new contracts, the packer must send the example contract to our Regional Office in Des Moines, within one business day of the contract's availability.

In addition to submitting example contracts, as specified in section 206.2(h) of the regulations, when there are any changes, expirations, or withdrawals to previously submitted example contracts, then packers must submit revised example contracts and notify us of expirations and withdrawals within one business day after expiration or withdrawal. The packer's example contracts must represent all of the contracts made available by the packer to swine producers for the purchase of swine for slaughter. The packer may submit example contracts and notifications electronically.

*What criteria will packers use to select example contracts?* To decide which contracts will serve as examples of similar contracts, as specified in section 206.2(d) of the regulations, packers will use the following criteria (four example-contract criteria):

- (1) The base price or the determination of base price;
- (2) The application of an accrual account or a ledger;
- (3) The 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); and
- (4) The use and amount of noncarcass merit premiums and discounts.

For contracts that are identical in all four example-contract criteria listed above, a packer will need to file only one example contract to represent that set of contracts for each plant that slaughters the swine purchased under the example contract.

*What must the packer provide for monthly reports?* As specified in section 206.3 of the regulations, packers will submit monthly reports that will provide, for existing contracts, the estimated number of swine committed and the maximum number of swine that could be delivered under contract for each of the next 12 months, expansion clauses for each contract type, and specify the contract types for which the packer has any available contracts.

The packer must provide a separate monthly report for each of the plants that it uses that has the slaughtering capacity specified in the definition of "packer," even if it had no existing contracts for which to report estimated deliveries of swine. The packer must estimate the number of swine to be delivered under each contract at the plant, aggregated by contract type. If the packer had no existing contracts for any or all contract types, the reported estimates would be zero. GIPSA will notify the packer of the contract type for each example contract.

*What information from the swine contract library will GIPSA make available to the public?* The example contracts will provide 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 and discounts. Other contract terms that will be reported include a variety of terms, such as quality and weight restrictions, length of contract, and use of packer specified genetics. We will summarize information on contract terms from the example contracts to provide as much information about contract terms as possible, subject to confidentiality protections specified in section 251 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1636).

We will publish in the monthly report as much information collected from packers each month as possible, subject to the requirement to maintain confidentiality as discussed above. We will calculate the aggregate 6- and 12-month totals from the information in the monthly reports received from all reporting packers and report the aggregates on a regional basis as listed below. We will use the same regions for reporting the monthly report estimate aggregates as described above for the summaries of contract terms from the contract library.

*What regions will GIPSA use for reporting?* The information we make available will be presented on a regional basis, as specified in sections 206.2(f) and 206.3(g)(2) of the regulations. Among the factors we will 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.<sup>11</sup>

For example, we will review the AMS regions for which AMS reports hog prices. If we determine that we can provide more information by splitting an AMS region into more than one region, then we will determine whether the information can be presented for smaller regions and maintain confidentiality. Alternately, if we determine that releasing information for an AMS region will not maintain confidentiality, then we will aggregate the information into larger regions that will maintain confidentiality.

In order to ensure confidentiality, information will only be published if it is obtained from no fewer than three packers, and no packer represents a dominant portion of the region's total slaughter based on market share. The specific factor used to determine if a packer is dominant in the region will not be released, to further assure confidentiality by preventing anyone from using knowledge about the factor to reveal information that we will withhold. In any region or set of circumstances that leads us to be concerned about our ability to publish information while maintaining confidentiality, in addition to the expertise provided by GIPSA economists and industry experts, we will consult with USDA statisticians to ensure that confidentiality is maintained.

To further maintain confidentiality and provide useful information, we may change the regions over time. Initially, based on our analysis of swine processing plants and the AMS regions, the information will be published for the regions listed below:

- The Western U.S. region includes all states west of the Mississippi River.
- The Western Cornbelt region includes Iowa, Kansas, Minnesota, Missouri, Nebraska, and South Dakota. (This region will also be included in the Western U.S. region.)
- The Iowa/Minnesota region includes Iowa and Minnesota. (This region will also be included in the Western Cornbelt region.)
- The Eastern Cornbelt region includes all states east of the

<sup>11</sup> Even with the differences between the contract information we report and prices reported by USDA AMS Market News, producers and other interested parties will be able to review the information for consistent regions to understand contract terms and prices paid for hogs purchased through various methods.

Mississippi River. (This region is the eastern half of the country, but is named Eastern Cornbelt for consistency with AMS regions.)

We will monitor changes in the swine industry, feedback from producers and other interested parties about the summary reports, and other relevant information to determine if changes in reporting regions need to be considered.

*How will GIPSA make summary example contract and monthly report information available?* As specified in sections 206.2(g) and 206.3(g)(1) of the regulations, we will make the contract library information and monthly reports available on the Internet on the GIPSA Web site at <http://www.usda.gov/gipsa/> and at the GIPSA Regional Office in Des Moines, Suite 317, 210 Walnut Street, Des Moines, IA 50309. The information available from the GIPSA Web site and at the regional office will be the same.

Initially, summarized information from example contracts could be available as early as 2 months after the final rule becomes effective (30 days after packers will be required to submit example contracts for each of the plants that has the slaughtering capacity specified in the definition of "packer" as specified in section 206.1). Subsequent information on new example contracts made available by packers will be available on a real-time basis, to the extent possible (packers must send GIPSA new example contracts within one business day of the contract being made available). The method and time of delivery and the complexity of contract terms will determine how quickly GIPSA can make the information available. Initially, summarized monthly report information could be available as early as 3 months after the final rule becomes effective (the first day of the month following packers' first monthly report submission.). Subsequent summarized monthly reports will be available the 1st of each month (2 weeks following the packers' monthly report submission).

#### **Executive Order 12866 and Regulatory Flexibility Act**

This 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 rule that includes the cost-benefit analysis required by Executive Order 12866. The economic analysis also provides a final regulatory flexibility analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601—612).

This rule implements Subtitle B of Title II of the P&S Act, which requires packers to report to the Secretary information for swine packing plants that have the slaughtering capacity specified in the subtitle's definition of "packer." The rule requires the reporting of information on swine marketing contracts by packers for plants that have the slaughtering capacity specified in the definition of "packer."

Each packer purchasing at least 100,000 swine per year must report information for swine processing plants it owns or at which it has swine slaughtered 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 including 2002, the most recent year for which complete data are available, this includes a total of 53 plants owned or utilized by 33 swine packers.

The rule establishes a swine contract library and requires packers operating or utilizing plants of the specified slaughtering capacity to submit example contracts and monthly reports to provide numbers of swine committed to packers under contract. We believe that this information program will benefit producers, especially small producers. It will increase information available to producers about contract terms, 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 will be imposed on producers as a result of the regulations. Monthly reports and information from the contract library on contract terms will be available on the GIPSA Web site on the Internet. Producers with Internet access will 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 will 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 will face costs associated with submitting contracts for the contract library. The first component of these costs is the initial cost of compiling and providing to GIPSA a copy of each example contract currently in effect or available at each plant that has the slaughtering capacity specified in the definition of "packer" in section 206.1. As specified in the definition of "contract" in section

206.1, this term includes written and verbal agreements. To submit example contracts for verbal agreements, packers will need to provide written descriptions of the verbal agreement. The second component is the cost of providing a copy of each new example contract subsequently made available by the packer. We estimate the hourly cost of these activities will average \$20 per hour.

Based on our experience reviewing swine 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 example contracts, and submit those examples as a package (including documenting verbal contracts) will average 9 hours per plant for the initial submission.

The first component of the 9 hours is an initial 4 hours to review the files of contracts and identify examples of existing and available contracts. Packers must identify which contracts are identical for reporting purposes, as specified in section 206.2(d) of the regulations, in order to determine which contracts need to be sent as examples.

The second component of the 9 hours is an additional 5 hours to collect and submit example contracts to GIPSA. This is composed of 0.5 hours per plant per example contract; we increased this estimate from the 0.25 hours estimated in the proposed rule to allow extra time for packers to review the guidelines developed for the submission of example contracts and the time to submit the example contracts electronically. Based on our experience reviewing swine contracts, we have determined that some packers will only have one example contract to report for each plant, while other packers will have a variety of example contracts. For this analysis and to provide an upper estimate for the costs associated with the contract library, we estimated that, on average, packers would have 10 example contracts per plant to be submitted to GIPSA for the initial filing. At 0.5 hours per plant per example contract, it would take 5 hours for the packer to collect and submit the 10 example contracts to GIPSA.

The total one-time cost to compile the initial submission of example contracts for all 53 plants<sup>12</sup> is \$9,540 (\$180 per plant × 53 plants, which combines the first component of \$20 per hour × 4 hours = \$80 and the second component of \$20 per hour × 0.5 hours × 10

<sup>12</sup> The regulation will require a total of 33 pork packing companies (packers) to report for 53 plants that have the slaughtering capacity specified in the definition of "packer" in section 206.1, based on data including 2001, the most recent year for which complete data are available.

example contracts = \$100 per plant). There should be no additional cost for electronic submission because the submission will be through a secure Web site, which will be at no additional cost to those packers that have Internet access.

After the initial submission, we estimate an average of about 2.5 hours per year per plant will be required to submit an average of 5 examples of new contracts or changes to previously submitted example contracts, at a cost per plant of \$25.00 per year (\$20/hour  $\times$  2.5 hours = \$50). In months when a packer does not have a new contract or modify a previously submitted example contract, there will be no cost of compliance with contract library reporting requirements. Packers must notify GIPSA within one business day when one of its example contracts no longer represents any existing or available contracts. The costs for this notification are included in the estimate for changes to previously submitted contracts. The total annual recurring cost for all 53 plants for the submission of examples of contract types is estimated to be \$2,650 (\$50 per plant  $\times$  53 plants).

Packers also face costs in complying with the monthly reporting requirements. We believe that many packers already maintain the required information electronically for use in business and strategic planning. 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.<sup>13</sup> Therefore, we do not anticipate that the packers will incur any additional costs for computer hardware to implement electronic submissions of monthly reports. For those packers that 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, will be required to set up a database or spreadsheet to maintain the necessary information. This estimate is based on our experience with spreadsheets and databases that are

similar in type and complexity. The higher hourly wage rate for this activity is 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 can 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 packers to set up a database or spreadsheet to maintain information for the monthly report for all 53 plants is estimated to be \$2,650 (\$50 per plant  $\times$  53 plants) if packers choose to submit reports electronically for all 53 plants.

An additional 2 hours per plant, at the estimated hourly cost of \$50.00 per hour for a total one-time cost of \$100.00 per plant, will 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 will provide the necessary information for the interface to our system. Packers that do not use electronic data transmission will not incur this initial set-up cost, but will not gain the advantage of potential savings from electronic recordkeeping and reporting as described below. The total one-time cost for packers to extract and format information and develop methods for electronic transmission for the monthly report for all 53 plants is estimated to be \$5,300 (\$100 per plant  $\times$  53 plants) if the packers choose to submit reports electronically for all 53 plants.

Once a recordkeeping and reporting system is established, additional time will be required to enter data into the database or spreadsheet each month. Packers that choose not to use an electronic system for maintaining and compiling data required for the monthly reports will manually compile the data on paper forms each month; the forms will be available from the Des Moines regional office. The total time required for either method will depend on the number of contracts in effect.

Based on our experience in working with similar documents and data entry processes, we estimate that it will take an average of 2 hours per month per plant to manually compile and report the figures needed for the monthly reporting provision. The initial monthly report may take somewhat longer than 2 hours.

We estimate the cost per hour of this activity will average \$20.00 per hour, for a total monthly cost per plant of \$40.00 (\$20 per hour  $\times$  2 hours = \$40). A packer using an electronic system to compile reports will face lower monthly compliance costs than a packer that does not use an electronic system. We estimate that a packer utilizing electronic systems will 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 per plant to compile and submit the monthly report is \$480 (\$40 per month  $\times$  12 months) if the packer chooses to submit reports manually or \$240 (\$20 per month  $\times$  12 months) if the packer chooses to submit reports electronically. The total annual recurring cost for all 53 plants to compile and submit the monthly report is estimated to be \$25,440 (\$480 per plant  $\times$  53 plants) if the packers choose to submit reports manually for all 53 plants or \$12,720 (\$240 per plant  $\times$  53 plants) if the packers choose to submit reports electronically for all 53 plants.

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 9 CFR Part 206. As shown in the table, total first year costs for all 33 packers (53 plants) to comply with the requirements of the contract library and monthly reports is \$37,630 if the packers choose to submit reports manually for all 53 plants or \$32,860 if the packers choose to submit reports electronically for all 53 plants. The total first year costs include the start-up costs, therefore, the annual recurring costs will be lower and are estimated to be \$28,090 if the packers choose to submit reports manually for all 53 plants or \$15,370 if the packers choose to submit reports electronically for all 53 plants.

<sup>13</sup> Most, if not all, of these packers are 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)).

	Costs per plant, manual	Costs per plant, electronic monthly reports	Total costs if packers use manual methods for all 53 plants <sup>1</sup>	Total costs if packers use electronic methods for monthly reports for all 53 plants <sup>1</sup>
<b>Start-Up Costs:</b>				
Contract Library:				
Review contracts, identify example contracts (4 hours x \$20.00/hr) .....	\$80.00	\$80.00	\$4,240.00	\$4,240.00
Collect and submit example contracts <sup>2</sup> (10 examples x 0.5 hr. x \$20.00 per hour) .....	\$100.00	\$100.00	\$5,300.00	\$5,300.00
Monthly Report:				
Set up database or spreadsheet (1 hour x \$50.00) .....	N/A	\$50.00	N/A	\$2,650.00
Development of transmission methods (2 hours x \$50.00) .....	N/A	\$100.00	N/A	\$5,300.00
<i>Total Start-Up Costs</i> .....	\$180.00	\$330.00	\$9,540.00	\$17,490.00
<b>Annual Recurring Costs:</b>				
Contract Library: Collect and submit example contracts (5 examples x 0.5 hr. x \$20.00 per hour)				
	\$50.00	\$50.00	\$2,650.00	\$2,650.00
Monthly Report: Enter data into database or spreadsheet, or tabulate on paper, and compile totals:				
(Electronic: 1 hour per month x 12 x \$20.00) .....	N/A	\$240.00	N/A	\$12,720.00
(Manual: 2 hours per month x 12 x \$20.00) .....	\$480.00	N/A	\$25,440.00	N/A
<i>Total Annual Recurring Costs</i> .....	\$530.00	\$290.00	\$28,090.00	\$15,370.00
<i>Total 1st Year Cost (Start-up costs plus annual recurring costs)</i> .....	\$710.00	\$620.00	\$37,630.00	\$32,860.00

<sup>1</sup> Although we believe it is likely that most packers 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.

<sup>2</sup> We are not assuming any electronic submission of contracts for purposes of this analysis because it is likely that many of the plants will submit the information directly and the plants may not have the electronic version of the contracts.

GIPSA will incur costs of operating the swine contract library, analyzing the monthly reports submitted by packers, ensuring that packers are in compliance, and making the information available at the P&SP regional office and on the GIPSA Web site. We estimate that GIPSA will incur total costs of \$400,000 per year for all activities, specified below, associated with implementing the swine contract library. We will monitor and review contracts submitted for the contract library and monthly reports filed by packers to assure completeness, consistency, and accuracy. In addition, we will conduct ongoing analyses of the data and information obtained from packers, and will explore ways to increase the usefulness of the published data and information. Our projected costs include communication costs, travel expense for plant visits to monitor compliance with the swine contract library sections of the P&S Act and regulations, costs for office supplies, computer hardware and software acquisition and maintenance.

We anticipate that our costs for providing assistance to packers and maintaining the contract library will decrease over time. As a packer becomes familiar with the regulations, it will need less assistance from us. Once the analysis of the initial submission of

contracts is complete, there will be fewer contracts received for analysis.

**Summary of Benefits**

The primary economic benefit of the contract library to producers will 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 producers the potential to improve overall production planning and marketing efficiency. Many producers report that they cannot currently obtain the information needed to compare contracts available from different packers. Producers may have very limited information, especially about contracts and contracting practices, since producers are parties to fewer 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 competing packers. Rather, they tend to contract with and deliver their hogs to a single packer. Producers have indicated to GIPSA that they do not have enough knowledge about contract terms available to them to encourage them to search out more favorable terms.

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

This increased information will be beneficial to producers in making production plans and determining how to market swine. The increased information about which contract types and contract terms are available will enable producers to understand the particular terms that are available. For example, different packers often have different requirements for swine with given carcass characteristics, and the packers' premiums and discounts reflect the unique requirements.<sup>14</sup> The information from the contracts will make producers aware of contract terms that better match the characteristics of

<sup>14</sup> 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.)

the swine they produce. Although the contract information will not identify which packers have specific contract terms available, producers will know that specific terms are available at a plant in identified regions.

Additionally, the monthly reports will 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 will 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 will 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 search costs for producers and increasing the amount of available information, information made available from example contracts and the monthly reports will 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 will be substantial. We believe that benefits to producers, from the availability of contract terms and packers' estimates of future deliveries, will include better planning for their marketing decisions.

We envision that the primary means of access to information from the example contracts and monthly reports will be through the GIPSA Web site on the Internet. The information will also be available in hard copy in our regional office located in Des Moines, Iowa. We believe that many producers have access to the Internet; for those who do not, we have coordinated with other USDA agencies with officers at the local level to provide Internet access, or producers could use public libraries with Internet service available, as many across the country do. Therefore, this method of

providing the information will 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 will copy and redistribute these reports at no direct cost to producers as part of the services they already provide to producers.

Although packers will bear the compliance costs of the regulations, packers are not the primary beneficiaries of the contract library. The chief benefit to the packers will 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 made available 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 will incur to implement the swine contract library requirements of the amendments to the P&S Act. The total annual cost for GIPSA to implement the contract library and monthly reports is \$400,000. The total first-year costs for packers choosing to utilize electronic submission methods is estimated to be \$330 per plant with an annual recurring costs thereafter of an estimated \$290 per plant; the total first-year cost for packers choosing to use manual submission methods is estimated to be \$710 with an annual recurring cost thereafter estimated at \$530 per plant. We believe all packers required to report have the capability to use electronic methods. However, we do not have an estimate for how many packers 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 packers using manual methods to submit example contracts and monthly reports. Using this conservative estimate, the total first-year cost to the industry is \$37,630 and annual recurring cost thereafter is \$28,090. We requested comments on these estimates and on the likelihood that packers will use electronic methods; none of the commenters provided this information. Additionally, the benefits to the producer will be an increase in the knowledge about supply and contract terms that could result in better marketing decisions. These benefits are difficult, if not impossible, to quantify. We requested commenters to provide additional information on the benefits of this regulation and the quantification of

those benefits; none of the commenters provided any additional information.

#### **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 definition, or 90 percent of all producers reporting sales of swine in the 1997 Census of Agriculture. The rule will not impose any reporting requirement or other burden on producers of any size. We believe the rule will 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.

The regulation will require a total of 33 pork packing companies (packers) to report for 53 plants that have the slaughtering capacity specified in the definition of "packer" in section 206.1. We have minimized the number of small entities that would have been required to comply with the swine contract library regulations as proposed by limiting the packers to those that purchase at least 100,000 swine per year. Based on the SBA size standard, approximately 15 of the packers that will be required to report, are considered small businesses. These small packers will bear some costs of compliance with the regulation. The costs, as described above in Summary of Costs, arise from the reporting and recordkeeping requirements for the packers that are required to report. The same requirements will be imposed on large and small packers that are required to report. However, we believe the burden of these requirements will be less on the packers classified as small businesses, as explained below.

#### *Projected Reporting Burden on Small Entities*

The rule requires packers to report two types of information regarding contracts for the purchase of swine for slaughter. The first type is an example



of each contract (called an "example contract") currently in effect or available by packers at each plant required to report under section 206.1. Packers must provide an initial submission of example contracts for existing and available contracts and subsequent submissions of example contracts for new contracts. A copy of an example contract will 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 have a relatively small number of example contracts that will have to be submitted. Packers will submit example contracts by mail, electronic data transmission, or another method that is convenient for them and approved by GIPSA. We will use the information in these contracts to prepare a report for public release that will describe the contract types and contract terms existing or available, but will not identify individual packers of any size, or release copies of actual individual contracts used by any packer. We will make the report with the information from the example contracts available on the Internet and at our regional office located in Des Moines, Iowa.

The second type of information reported by packers will consist of a monthly report of the number of swine committed for delivery under each type of existing contract. The form for the monthly report will consist of up to 196 separate fields of information, including report date, packer, plant identification, and certification information (16 fields); swine delivery estimates for 6 contract type categories for each of the next 12 months (up to 144 fields for committed and maximum estimates); yes or no for any currently available contracts under a category of contract type (up to 6 fields); codes for the types of expansion clauses 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 will fill out 196 fields of information for a plant that had one or more contracts under each of the six contract types. Packers must report this information once each month for each plant for which it is required to report under the regulations. If 196 fields of information were required per submission, a packer will report up to 196 pieces of information each month for each plant. However, few if any packers will 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 will require entry of data into 68 to 94 fields. Packers will compile and aggregate data from individual contracts to enter into these fields. Small packers that meet the minimum purchasing and slaughtering capacity required for reporting are 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 for the larger packers.

We encourage packers to utilize electronic data transmission to submit the required information to GIPSA. We will provide packers the necessary information on procedures to submit the data to GIPSA electronically. We expect that packers will use a variety of methods to provide the data to GIPSA. For electronic data transmission, we will provide a secure system to allow packers to submit data via the Internet through the GIPSA Web site.

Those small packers that choose not to use electronic submission methods for example contract information and monthly reports can send the information via facsimile or mail to GIPSA. However, a packer will have to meet the submission deadlines regardless of the method used for submission.

#### *Projected Recordkeeping Burden on Small Entities*

Each packer that is required to report information is 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 7 U.S.C. 221, 9 CFR 201, and 9 CFR 203.4. This rule does not require maintenance of records beyond those that packers are already required to maintain. Therefore, the rule does not create new, unduly burdensome recordkeeping requirements. Professional skills required for recordkeeping under the rule are no different than those already employed by the reporting entities. However, packers may need to extract and format the required information for submissions to GIPSA. We believe the skills needed to maintain such records are already in place at those small packers affected by the rule.

#### **Alternatives**

We considered alternative methods by which the objectives of the statute and implementing regulations could be accomplished. The regulations, as mandated by the Livestock Mandatory Reporting Act, require packers that own or use 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.

In the proposed rule, we required any packer, regardless of size, to comply with the swine contract library requirements if the packer used a plant that met the slaughter capacity specified in the definition of packer in section 201.1 of the regulations. However, there are a number of small packers that buy small amounts of swine and have the swine custom slaughtered at a plant large enough to require the packer to report. To eliminate the potential burden on such small packers, we revised the rule to add a minimum annual purchase of 100,000 swine to the definition of "packer." Therefore, these small packers are not covered by the swine contract library regulations.

The example contract requirement for filing contract types in use could be accomplished by requiring that packers file copies of all contracts, not just example contracts. 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 submit multiple copies of the same 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 (that is, 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 in the monthly report. Under the P&S Act, packers are required to submit information on various forms, and packers are used to submitting the information via facsimile or mail. Therefore, we decided to consider that a packer would expect to submit this information in the same format in which it submits other information. Probably all of the packers that will be required to submit information for the swine contract

library will have the capability to submit the required information electronically. The required information will be plant level information and some packers may choose to have the plant submit the information directly to GIPSA. Even though the packer may have the capability to submit information electronically, that capability may not exist at each of the plants. In addition, the option that we developed for the electronic submission of monthly reports is via data entry into an automated form on the Web site on the Internet; the automated form is the same as the hard copy form. We believe that the collection of this information would be most successful by providing a variety of options for submission. Therefore, in developing these 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 will encourage packers to utilize electronic data transmission, and we will provide to packers the necessary information on procedures to submit data to GIPSA electronically, we expect that packers will use a variety of methods to provide the data to GIPSA. For electronic data transmission, we will provide a secure system to allow packers to submit data via the Internet through the GIPSA Web site.

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 will incur the costs of complying with these 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 because these 15 packers purchase more than 100,000 swine annually and have swine slaughtered at a slaughtering plant that slaughtered an average of more than 100,000 swine per year. We believe that all of the approximately 92,000 small producers will accrue benefits at little or no cost. Therefore, we believe that the balance of the economic impact on small entities will be positive.

#### Executive Order 12988

This rule has been reviewed under E.O. 12988, Civil Justice Reform, and is not intended to have retroactive effect. This rule will 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 prior to any judicial challenge to the provisions of this rule.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0580–0021.

#### GPEA Compliance

GIPSA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies to provide the public option of submitting information or transacting business electronically to the maximum extent possible.

#### List of Subjects in 9 CFR Part 206

Swine, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, GIPSA amends 9 CFR Chapter II as follows:

■ 1. Add Part 206 to read as follows:

#### PART 206—SWINE CONTRACT LIBRARY

Sec.

206.1 Definitions.

206.2 Swine contract library.

206.3 Monthly report.

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

##### § 206.1 Definitions.

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

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

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

**Contract.** Any agreement, whether written or verbal, between a packer and

a producer for the purchase of swine for slaughter, except a negotiated purchase (as defined in this section).

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

- (1) Swine or pork market formula purchases with a ledger,
- (2) Swine or pork market formula purchases without a ledger,
- (3) Other market formula purchases with a ledger,
- (4) Other market formula purchases without a ledger,
- (5) Other purchase arrangements with a ledger, and
- (6) Other purchase arrangements without a ledger.

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

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

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

- (1) The buyer-seller interaction that results in the transaction and the agreement on actual base price occur on the same day; and
- (2) The swine are scheduled for delivery to the packer not later than 14 days after the date on which the swine are committed to the packer.

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

**Other market formula purchase.** A purchase of swine by a packer in which the pricing determination is a formula price based on any market other than

the markets for swine, pork, or a pork product. The pricing determination includes, but is not limited to:

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

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

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

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

*Packer.* Any person engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. The regulations in this part only apply to a packer purchasing at least 100,000 swine per year and slaughtering swine at a federally inspected swine processing plant that meets either of the following conditions:

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

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

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

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

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

#### § 206.2 Swine contract library.

(a) *Do I need to provide swine contract information?* Each packer, as defined in § 206.1, must provide information for each swine processing

plant that it operates or at which it has swine slaughtered that has the slaughtering capacity specified in the definition of packer in § 206.1.

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

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

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

(1) Base price or determination of base price;

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

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

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

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

(1) *Electronic report.* Example contracts and notifications required by this section may be submitted by electronic means. Electronic submission may be by any form of electronic transmission that has been determined to be acceptable to the Administrator. To obtain current options for acceptable

methods to submit example contracts electronically, contact GIPSA through the Internet on the GIPSA Web site (<http://www.usda.gov/gipsa/>) or at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309.

(2) *Printed report.* Each packer that chooses to submit printed example contracts and notifications must deliver the printed contracts and notifications to USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309.

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

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

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

(Approved by the Office of Management and Budget under control number 0580-0021)

#### § 206.3 Monthly report.

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

capacity specified in the definition of packer.

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

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

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

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

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

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

clauses in the monthly report by listing a code for the following conditions:

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

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

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

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

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

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

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

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

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

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

*information be made available to the public?*

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

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

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

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

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

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

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

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

(Approved by the Office of Management and Budget under control number 0580-0021)

Dated: August 5, 2003.

**Donna Reifschneider,**

*Administrator, Grain Inspection, Packers and  
Stockyards Administration.*

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