7. Section 91.39 is revised to read as follows:

**§ 91.39 Premium hourly fee rates for overtime and legal holiday service.**

(a) When analytical testing in a Science and Technology facility requires the services of laboratory personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. When analytical testing in a Science and Technology facility requires the services of laboratory personnel on a Federal holiday or a day designated in lieu of such a holiday, such services are considered holiday work. Laboratory analyses initiated at the request of the applicant to be rendered on Federal holidays, and on an overtime basis will be charged fees at hourly rates for laboratory service that appear in this paragraph. The new fiscal year for Science and Technology Programs commences on October 1 of each calendar year. The laboratory analysis rate for overtime service is $93.00 per hour in fiscal year 2010, $96.00 per hour in fiscal year 2011, and $99.00 per hour in fiscal year 2012. The laboratory analysis rate for Federal holiday or designed holiday service is $108.00 per hour in fiscal year 2010, $111.00 per hour in fiscal year 2011, and $115.00 per hour in fiscal year 2012.

(b) Information on legal holidays or what constitutes overtime service at a particular Science and Technology laboratory is available from the Laboratory Director or facility manager.

Dated: October 20, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9–25632 Filed 10–23–09; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### 9 CFR Part 206

**RIN 0580–AB06**

### Swine Contract Library

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

**ACTION:** Proposed rule.

**SUMMARY:** On August 11, 2003, the Grain Inspection, Packers and Stockyards Administration (GIPSA) implemented new Subtitle B of Title II of the Packers and Stockyards Act which was added by the Livestock Mandatory Reporting Act of 1999 (1999 Act), by establishing the Swine Contract Library (SCL). The statutory authority for the library lapsed on September 30, 2005. On October 5, 2006, the Livestock Mandatory Reporting Reauthorization Act (Reauthorization Act) reauthorized the 1999 Act until September 30, 2010, and also amended the swine reporting requirements of the 1999 Act. This proposed rulemaking would re-establish the regulatory authority for the library's continued operation and incorporate certain changes contained within the Reauthorization Act that impact the SCL, as well as make other changes to enhance the library's overall effectiveness and efficiency in response to input from regulated entities and the public. We also intend to request a 3-year extension of and revision to the currently approved information collection in support of the reporting and recordkeeping requirements for the SCL program. This approval is required under the Paperwork Reduction Act.

**DATES:** We will consider comments we receive by December 28, 2009.

**ADDRESSES:** We invite you to submit comments on this proposed rule. You may submit comments by any of the following methods:

- *E-Mail: comments.gipsa@usda.gov.*
- *Mail:* Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- *Fax:* (202) 690–2173.
- *Hand Deliver or Courier:* Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- *Internet:* Go to *http://www.regulation.gov* and follow the on-line instructions.

*Instructions:* All comments should make reference to the date and page number of this issue of the **Federal Register.** Regulatory analyses and other documents relating to this action will be available for public inspection in Room 1643–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604, during regular business hours (7 CFR 1.27(b)). Please call a member of the GIPSA Management Support Staff at (202) 720–7486 to view the comments reviewed.

**FOR FURTHER INFORMATION CONTACT:** S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–7363, or via E-mail at *s.brett.offutt@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

GIPSA is responsible for the enforcement of the Packers and Stockyards Act of 1921 (7 U.S.C. 181 *et seq.*) (P&S Act or Act). Under authority delegated to GIPSA by the Secretary of Agriculture (Secretary) in Section 407(a) of the P&S Act (7 U.S.C. 228), we are authorized to create regulations necessary to carry out the provisions of the Act.

The 1999 Act (Pub. L. 106–78) amended Title II of the P&S Act to include Subtitle B—Swine Packer Marketing Contracts. The 1999 Act mandated the creation and maintenance of a library of marketing contracts offered by certain packers to producers for the purchase of swine. To implement this legislation, GIPSA established the SCL and promulgated SCL regulations (9 CFR Part 206) requiring that packers, as defined in Subtitle B, Title II, of the P&S Act, file example marketing contracts with GIPSA along with monthly estimates of the number of swine to be delivered under contract. GIPSA compiles this information and makes summary reports available to the public.

On October 22, 2004, the 1999 Act expired and was not reauthorized until December 3, 2004 (Pub. L. 108–444). Authority for the 1999 Act was extended, however, to September 30, 2005. The 1999 Act lapsed again in 2005 and was reauthorized and amended on October 5, 2006, when the Reauthorization Act (Pub. L. 109–296) was signed into law. The 1999 Act is scheduled to once again expire on September 30, 2010.

When the 1999 Act expired in October 2004, GIPSA asked swine packers to continue to comply with the SCL regulations voluntarily. With the information submitted voluntarily by packers, GIPSA has continued to make summary reports available to the public.

This proposed rule would re-establish authority for the SCL regulations (9 CFR Part 206) by amending the regulations' authority citation to include Subtitle B of Title II of the P&S Act (7 U.S.C. 198–198b). In addition to amending the SCL regulations to make them consistent with the Reauthorization Act, we would also amend the SCL regulations to incorporate suggestions received from the public and regulated entities. Specifically, we propose to:

(1) Revise the definition of ''packer'' to be consistent with the Reauthorization Act;

(2) Revise the definitions of several contract types;

(3) Add definitions of terms used in several contract types to describe the

market price that is being paid for swine;

(4) Add a new requirement that an example contract submission, a notification of contract expiration, and a notification of a contract withdrawal include a standard cover sheet; and

(5) Add a waiver for packers that do not utilize marketing contracts.

The purpose of these amendments is to make the information collected more uniform and more useful, while reducing the burden on the reporting entities.

**Description of Proposed Amendments**

The SCL final rule was published in the **Federal Register** (68 FR 47802) on August 11, 2003, and became effective on September 10, 2003. We have not amended these regulations since the implementation of the library. The following describes the proposed changes to the 2003 SCL regulations required by the Reauthorization Act, along with changes that have been requested by regulated entities.

**Definitions**

In section 206.1, we propose to revise the definitions of ''packer,'' ''other market formula purchase,'' ''other purchase arrangement,'' and ''swine or pork market formula purchase,'' and add new definitions for several terms that are used currently in contracts to describe the market price being paid for swine. While the definition of ''packer'' would be revised to make the SCL regulations consistent with the Reauthorization Act, other existing definitions would be revised and new definitions added to make the SCL regulations consistent with the definitions used by USDA's Agricultural Marketing Service (AMS) in its mandatory price reporting program regulations, and to respond to suggestions received from regulated entities.

Under the 1999 Act, the term ''packer'' was defined as only those persons purchasing and slaughtering an average of at least 100,000 swine per year at a federally inspected swine processing plant during the immediately preceding 5 calendar years. The Reauthorization Act, however, amended the term ''packer'' to include those persons who slaughter an average of at least 200,000 sows, boars or combination thereof per year during the immediately preceding 5 calendar years. In addition, the Reauthorization Act separated the reporting requirements for sows and boars from barrows and gilts. Because boars and sows fall under the original definition of the term ''swine'' in the 1999 Act's provisions that authorize the Swine Contract Library, slaughterers of at least 100,000 boars and sows at a single federally inspected processing plant would continue to be subject to the SCL regulations. The Reauthorization Act expanded the definition of the term ''packer'' to include not only federally inspected swine processing plants of a certain size, but also persons who slaughter a certain number of sows and boars at multiple plants. We believe that the proposed revised definition of the term ''packer'' reflects Congressional intent to have persons who slaughter less than 100,000 swine at one plant, but slaughter at least 200,000 boars and sows total at multiple small plants, report prices under the mandatory reporting requirements. We have identified only one firm that would be affected by this change in the definition of the term ''packer'' in the SCL.

Because there is no legislative history for the Reauthorization Act to assist us in interpreting the intended meaning of the amended definition of the term ''packer,'' we are proposing a definition that would be consistent with the term as defined in the 2003 SCL regulations. That definition, which meets the requirements of the 1999 Act, excludes small packers who do not purchase large numbers of swine and likely would not use marketing contracts to make those purchases.[1] Therefore, we propose to include in the definition of the term ''packer'' only those persons who purchase at least 200,000 sows, boars, or some combination thereof per year and have those animals slaughtered at federally inspected swine processing plants. We believe that our proposed revised definition of the term ''packer'' would continue to exclude small sow and boar packers.

In our proposal, we also distinguish between the terms ''packer'' and ''plant'' in our revised definition of the term ''packer'' to show that a packer is a person, or entity that purchases swine for slaughter and a plant is a facility where the swine are slaughtered. We also propose to add the phrase ''alone or in combination with other plants'' after the phrase ''slaughtering capacity'' to § 206.2(a), 206.2(b), 206.3(a) and 206.3(b) of the regulations to reflect the revised definition of the term ''packer.''

Because the Reauthorization Act redefined the term ''packer'' to include a person who slaughters sows, boars, or some combination thereof, the terms ''boar'' and ''sow,'' which are defined in section 231 of the AMA (7 U.S.C. 1635i), would be added to the definitions in the SCL regulations.

[1] 68 FR 47802, 47802–02 (2003).

Based on the usage of the terms ''floor,'' ''window,'' and ''ceiling'' prices in the amended definition of ''other purchase arrangement,'' and ''swine or pork market formula purchase,'' in section 206.1 of the regulations, we propose that definitions for the terms ''floor price,'' ''window price,'' and ''ceiling price'' be added to the regulations for clarity.

The term ''floor price'' would be defined as the minimum market price for swine; the term ''ceiling price'' would be the maximum market price for swine; and, the term ''window price'' would be the range of market prices paid for swine between the ''floor price'' and the ''ceiling price.'' The proposed definitions of these terms provide for adjustments in the market price.

We also propose to revise the definitions for the terms ''swine or pork market formula purchase,'' ''other market formula purchase,'' and ''other purchase arrangement,'' all of which refer to categories of contracts. Swine packers that are required to report under both the 1999 Act and the SCL have requested that we make these changes so that they can use the same contract types for reporting the estimated swine contract deliveries to GIPSA, and reporting actual swine deliveries to USDA's Agricultural Marketing Service (AMS). Regulated entities have told us that it is contrary to the purpose of price discovery to have different definitions for different mandatory price reporting systems, as well as an unnecessary burden for reporting entities.

Based on the request received from the industry, we propose to:

(1) Revise the definition of the term ''other market formula purchase'' to remove specific examples of this type of contract and state that the pricing could include a formula based on futures or options. This change would make the definition consistent with AMS mandatory price reporting regulations;

(2) Revise the definition of the term ''other purchase arrangement'' to specify that this category includes long term contract agreements, fixed price contracts, cost of production formulas, and formula purchases with a floor, window (range or spread), or ceiling price; and

(3) Revise the definition of the term ''swine or pork market formula purchase'' to add references to floor, window, or ceiling prices. The proposed change would clarify that a formula purchase with a floor, window, or ceiling price is not considered to be a swine or pork market formula purchase.

The proposed changes to the definition of the term ''other purchase arrangement'' would make the SCL

definition consistent with the AMS definition. The proposed amendments to the other definitions listed above clarify that GIPSA does not consider a contract with a floor, window or ceiling price, or formula based on the cost of production to be a type of market purchase. As a result of these changes in definitions, categorization of some existing contracts would change. For example, a contract in which the formula contains a floor or ceiling price would be categorized as an ''other purchase arrangement'' rather than a ''swine or pork market formula.'' A contract in which the base price is determined by the cost of production, including formulas based on feed markets, would be an ''other purchase arrangement'' rather than an ''other market formula.'' These revised definitions would appear both in the regulations and on the cover sheet for contract submissions.

Furthermore, in our administration of the SCL, approximately 25 percent of packers currently subject to the SCL regulations have reported that they do not use marketing contracts and have reported the estimates of swine to be delivered under contract as zero each month. Swine packers who buy swine on the spot market or who contract with growers to produce swine might not have any marketing contracts and therefore would have no contracts to submit. But, these packers are still required to submit a monthly report. GIPSA believes that monthly reports filled with zeroes do not provide information that is relevant to the price discovery process. An annual waiver would reduce the burden on regulated entities and reduce the number of essentially blank entries in the SCL database. Therefore, we propose to amend § 206.3, ''Monthly Report,'' to include a new procedure that would allow swine packers who do not use any marketing contracts to file a yearly waiver request.

**Options Considered**

This rulemaking is necessary to give the SCL regulations the force and effect of law. This proposal is possible now that the statute creating the SCL has been reauthorized. When the authorizing legislation lapsed, GIPSA requested that packers who are required to report under the SCL continue to submit their reports voluntarily, and many packers did so. Now that the 1999 Act has been reauthorized, the statutory basis for enforcing the SCL regulations again exists. In order to effectively resume the SCL program, this rulemaking is necessary.

We considered one alternative to the proposed changes in the definitions, which was to ask packers to continue to voluntarily comply with regulations that are not enforceable and are no longer consistent with the authorizing legislation. Since that is not a viable option, we have no alternative but to revise the SCL regulations to carry out provisions of the P&S Act.

We considered not waiving the requirement that packers who do not purchase swine under contract report information to GIPSA for the SCL. However, we did not see value in filling GIPSA's SCL database with blank monthly reports. We also considered a waiver of longer than 1 year, but did not wish to provide such a blanket waiver since business conditions change over time. Packers with a waiver who commence purchasing swine under marketing contracts would be required to begin filing contracts on the first business day of the following month as described in § 206.2, and commence submitting monthly reports as required by § 206.3 of the regulations.

**Effects on Regulated Entities**

If these proposed regulations are implemented, the reporting burden for most packers should remain about the same or slightly less than the reporting burden under the expired regulations. Swine packers would have to comply with regulations that they have complied with in the past. We anticipate that 35 swine packers that operate or have swine slaughtered at 55 plants would be required to comply with the SCL regulations. This represents only 8.5 percent of all federally inspected swine plants; the others do not meet the size and capacity definition of ''packer'' for the purpose of the proposed rule. Nearly half of the 35 swine packers now comply with the SCL requirements voluntarily. Three of the entities that would be subject to this proposed rule are new respondents, and their anticipated burden is under 4 hours to initiate the reporting process. For the 32 remaining swine packers, the expected burden is .25 hours per packing plant to submit an example of each new or amended contract to GIPSA.

The proposed change in the definition of the term ''packer'' would require reporting by one additional firm. That firm would otherwise not meet the previous size and capacity definition of ''packer.''

This proposal should benefit swine producers by increasing their knowledge about contract terms and the number of swine under contract, improve market transparency, and give swine producers the ability to make more informed marketing decisions. Market transparency facilitates market efficiency by reducing price information search costs for market participants. Availability of market information may also contribute to considerations of equity and fairness in the marketplace.

**Executive Order 12866 and Regulatory Flexibility Act**

The Office of Management and Budget (OMB) has designated this rule as not significant for the purposes of Executive Order 12866.

We have determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, an initial regulatory flexibility analysis has not been provided. This rule will apply to approximately 35 packers operating at 55 plants. This represents only 8.5 percent of all federally inspected swine plants; the others are too small to meet the size and capacity definition of the term ''packer'' for the purpose of this proposed rule. Of those 35 packers, 18 have fewer than 500 employees and will therefore meet the applicable size standard for small entities in the Small Business Administration (SBA) regulations (13 CFR 121.201). For the North American Industry Classification System (NAICS) code 311611 ''Animal (except poultry) Slaughtering,'' the SBA size standard is 500 employees. However, the firms to which this rule applies are the largest of the firms in this industry that meet the size standard for small businesses. We estimate that eight of those 18 small entities would be eligible for an annual waiver, thus reducing the required reporting burden on those entities from 12 monthly reports to one annual waiver request. For the remaining 10 small entities that are not eligible for a waiver, the requirement to submit marketing contracts to GIPSA is estimated at .25 hours (15 minutes) per contract, and the monthly report is estimated to average 2 hours per report prepared and submitted by mail or facsimile, and 1 hour per report prepared and submitted electronically, which does not represent a significant economic burden or impact.

The proposed change in the definition of the term ''packer'' would require one additional firm. That firm would otherwise not meet the previous size and capacity definition of ''packer.''

This proposed rule requires swine packers to submit certain information to GIPSA. It does not impose any restrictions on the form, timing, or

location of contracts in which regulated entities may engage. It places no additional burden or limit on current or future business relationships into which affected firms may enter.

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act and we believe that it will not have a significant economic impact on a substantial number of small entities. We welcome comments on the cost of compliance with this rule, and particularly on the impact of this proposed rule on any small entities. We also welcome comments on alternatives to the proposed rule that could achieve the same purpose with less cost or burden.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. These actions are 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. In addition, the 1999 Act, as amended, does not restrict or modify the authority of the Secretary to administer or enforce the Packers and Stockyards Act of 1921 (7 U.S.C. 181 *et seq.*). 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 *et seq.*), GIPSA is also requesting an extension for and revision to a currently approved information collection in support of the reporting and recordkeeping requirements under the SCL program.

*Title:* Swine Contract Library.

*OMB Number:* 0580–0021.

*Expiration Date of Approval:* October 31, 2009.

*Type of Request:* Extension and revision of a currently approved information collection.

Abstract: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is responsible for maintaining the Swine Contract Library (SCL), which is authorized by the Packers and Stockyards Act and requires that certain swine packers submit procurement contracts and delivery estimates to GIPSA. Congress reauthorized the SCL on October 5, 2006, and this information collection describes the requirements as they exist in that 2006 reauthorization. The information collection and recordkeeping requirements for the SCL are essential to maintaining the mandatory library of swine marketing contracts and reporting the number of swine that are contracted for delivery. Thirty-five packers are currently required to file contracts and report certain information on deliveries. These packers operate or they have swine slaughtered at a total of 55 plants. We expect the overall number of swine packers and plants to remain relatively constant, but the specific swine packers required to report under the SCL will vary with consolidation and construction within the industry.

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

We understand from discussions with packers complying with current reporting requirements that reporting packers have adapted pre-existing data and information systems to provide the required information.

There are two types of information collections required for the Swine Contract Library discussed below.

The first information collection requirement consists of submitting example contracts. Initially, a packer submits example contracts currently in effect or available for each swine processing plant that is subject to the regulations. Subsequently, a packer submits example contracts for any offered, new, or amended contracts that vary from contracts submitted previously in regard to the base price determination, the application of a ledger or accrual account, carcass merit premium and discount schedules (including the determination of the lean percent or other merits of the carcass that is used to determine the amount of the premiums and discounts and how those premiums and discounts are applied), or the use and amount of noncarcass merit premiums or discounts. The initial submission of example contracts requires more time than subsequent filings of new contracts or changes, as packers initially need to review all their contracts to identify the unique types that need to be represented by an example submitted to GIPSA.

Thereafter, subsequent filings require a minimal amount of effort on the part of packers, as only example contracts that represent a new or different type need to be filed with GIPSA. An optional contract submission cover sheet is available, but not required, for submitting example contracts. Approximately one-half of the packers currently subject to the regulations use Form P&SP 342, Contract Submission Cover Sheet. This cover sheet is required for entering the contract into our system; if a contract is submitted without a cover sheet, one is completed by GIPSA staff.

The required submission of contracts includes both written and verbal contracts. Packers have added documentation of verbal contracts to their existing recordkeeping systems in order to comply with this requirement. The optional form that is available (P&SP–343), but not required for reporting verbal contracts, is used by 10 packers; 1 packer that relies heavily on verbal contracts uses this optional form exclusively to document its verbal contracts. Of 579 contract files on file with GIPSA in the SCL, the optional verbal contract sheet was used by packers to document 157 verbal contracts.

The second information collection requirement is a monthly filing of summary information on *Form P&SP 341, Monthly Report: Estimates of Swine To Be Delivered Under Contract.* The form for the monthly filing is simple and brief. For new packers required to start reporting, this data should be readily available to packers in their existing record system. We encourage electronic submission of data to GIPSA and provide information on how that can be accomplished effectively. In 2008, approximately 90 percent of monthly reports were submitted via the Web site, with the remaining 10 percent submitted via fax or by mail.

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

**Contract Submission Cover Sheet (Form P&SP–342)**

*Estimate of Burden:* The reporting burden for submission of contracts is estimated to include 4 hours per plant for an initial review of all contracts to categorize them into types and to identify unique examples, plus an additional 0.25 hours per unique contract identified to submit an example

of that contract. After the initial filing, the reporting burden is estimated to include 0.25 hours per plant to submit an example of each new or amended contract.

*Respondents:* Swine packers that are required to report information for the Swine Contract Library.

*Estimated Number of Respondents:* 35 swine packers (55 plants total).

*Estimated Number of Responses per Plant:* The number of responses per plant varies. Some plants would have no contracts, while others could have up to 80 contracts. We receive an average of six example contracts per plant per year for offered contracts and amended existing or available contracts.

*Estimated Total Annual Burden on Respondents:* The initial filing of examples of existing contracts by all plants newly subject to the regulations combined is estimated to be 5.5 hours. Based on changes in the industry, we anticipate that one new plant would become subject to the regulations each year. The burden is calculated as follows: 4 hours per plant for initial review × 1 new plant = 4 hours for initial review; 0.25 hours per contract × 6 example contracts per plant × 1 new plant = 1.5 hours; 4 hours + 1.5 hours = 5.5 total hours.

Thereafter, we expect the burden to be 82.5 total hours annually for all subsequent filings of examples of offered or amended existing or available contracts by all plants combined, based on an average of 6 offered or amended existing or available contracts annually. The burden is calculated as follows: 0.25 hours per contract × 6 example contracts per plant × 55 plants = 82.5 hours.

The initial review of 55 plants × 1 respondent per plant × 4 hours = 220 hours.

Total Cost: We expect an initial filing cost of $138 for the one new plant required to report, which is calculated as follows: 5.5 hours × $25 per hour = $138. Thereafter, we expect a total cost of $2,063 annually for all plants combined for submission of subsequent filings. This is calculated as follows: 82.5 hours × $25 per hour = $2,063.

**Monthly Report: Estimate of Swine To Be Delivered Under Contract (Form P&SP–341)**

*Estimate of Burden:* The reporting burden for compiling data, completing and submitting the monthly report form is estimated to average 2 hours per report prepared and submitted manually by mail or facsimile, and 1 hour per report prepared and submitted electronically. There would be an estimated additional one-time set up burden of 1 hour at a cost of $60 per plant for a packer to create a spreadsheet or a database for recordkeeping and preparing monthly estimates. There would be an estimated additional 2 hour burden at a cost of $60 per hour or $120 per plant for a packer to develop procedures to extract and format the required information and to develop an interface between the packer and GIPSA's electronic recordkeeping systems. The hourly rate for the development of electronic tools is assumed to be high due to the need to use personnel with specialized computer skills.

*Respondents:* Swine packers that are required to report information for the Swine Contract Library.

*Estimated Number of Respondents:* 35 packers (55 plants total).

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

*Estimated Total Annual Burden on Respondents:* 1,320 hours for all plants combined if all plants used manual compiling, preparation, and submission. The annual burden is calculated as follows: 2 hours per response × 55 plants × 12 responses per plant = 1,320.

For plants using electronic compiling, preparation and submission, the annual burden would be 600 hours, which is calculated as follows: 1 hour per response × 50 plants (90% × 55 = 50) × 12 responses per plant = 600 hours.

Total Cost: For all 55 plants, the cost is estimated at $33,000 annually if all plants submit data manually. This is calculated as follows: 1,320 × $25 per hour = $33,000.

For all 55 plants, the cost is estimated at $16,500 annually if all prepared and submitted data electronically. This is calculated as follows: 660 hours × $25 per hour = $16,500.

We estimate an additional one-time set-up cost of $180 if all plants newly subject to the regulations were to utilize only electronic systems for preparing and submitting data. This cost is calculated as follows: 1 hour to build spreadsheet/database + 2 hours to develop electronic interface = 3 hours; then 3 hours total development × $60 per hour × 1 new plant = $180.

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

As required by the Paperwork Reduction Act (44 U.S.C. 3506(c)(2)(A)) and its implementing regulations (5 CFR 1320.8(d)(1)(i)), we specifically request comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden on the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for the Office of Management and Budget approval. All comments will also become a matter of public record.

**E-Government Act Compliance**

GIPSA is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

Swine, Reporting and recordkeeping requirements.

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

1. Revise 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:** 7 U.S.C. 198–198b; 7 U.S.C. 222.

**§ 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 the term ''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.

*Boar.* A sexually-intact male swine.

*Ceiling price.* The maximum market price that will be paid for swine. Adjustments may be made to the base price if the market price rises above this price.

*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.

*Floor price.* The minimum market price that will be paid for swine. Adjustments may be made to the base price if the market price falls below this price.

*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. This includes a formula purchase where the price formula is based on one or more futures or options contracts.

*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. This contract type includes long term contract agreements, fixed price contracts, cost of production formulas, and formula purchases with a floor, window or ceiling price.

*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 apply only to a packer that meets the conditions in either paragraph (1) or (2) of this definition:

(1) A packer purchasing at least 100,000 swine per year and slaughtering swine at one or more federally inspected processing plants that meet either of the following conditions:

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

(ii) A 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.

(2) Any packer purchasing an average of at least 200,000 sows, boars, or any combination thereof, per year and slaughtering at least 200,000 sows, boars, or any combination thereof at one or more federally inspected processing plants during the immediately preceding 5 calendar years, with the average based on those periods in which the plant slaughtered swine.

*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).

*Sow.* An adult female swine that has produced one or more litters.

*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 mechanism is a formula price based on a market for swine, pork, or pork product, other than any formula purchase with a floor, window or ceiling price, or a futures or option contract for swine, pork, or a pork product.

*Window price.* The range of market prices that will be paid for swine. Adjustments may be made to the base price if the market prices fall outside this range. The window price contains both the floor and ceiling prices.

**§ 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, alone or in combination with other plants, 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, alone or in combination with other plants, 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 1 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, notifications required by this section, and Form P&SP 342, Contract Submission Cover Sheet, 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.gipsa.usda.gov*) or at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 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, Iowa 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 1 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.gipsa.usda.gov*) and at USDA–GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 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 1 business day of the change, expiration, or withdrawal.

**§ 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, alone or in combination with other plants, 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, alone or in combination with other plants specified in the definition of packer in § 206.1. Each packer must deliver the report to the GIPSA Regional Office in Des Moines, Iowa, by the close of business on the 15th of each month, beginning at least 45 days after the initial submission of example contracts. 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.gipsa.usda.gov*) and at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 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 must 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.gipsa.usda.gov*) or at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309.

(2) *Printed report.* Each packer may deliver its printed monthly report to USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 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 first business day of each month. The monthly reports will be available on the Internet on the GIPSA Web site (*http://www.gipsa.usda.gov*) and at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309.

(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.

(h) *Where and how do I file a waiver request?* The waiver request must be submitted in writing and include a statement that the packer does not procure swine using marketing agreements. The packer must send the waiver request to the GIPSA Regional Office in Des Moines, Iowa. If the waiver request is approved, GIPSA will inform the packer in writing that it has been granted a waiver for 12 months following the date of receipt of the waiver request unless the status of the packer changes during that year. The packer will be notified to submit the information required in this part if it begins using marketing agreements during the waiver period or if GIPSA determines that the packer utilizes marketing agreements.

**J. Dudley Butler,**

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

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BILLING CODE 3410–KD–P

## FARM CREDIT ADMINISTRATION

## 12 CFR Chapter VI

**RIN 3052–AC39**

## Statement on Regulatory Burden

**AGENCY:** Farm Credit Administration.

**ACTION:** Final notice of intent.

**SUMMARY:** This notice of intent is part of the Farm Credit Administration's (FCA, Agency, or we) initiative to reduce regulatory burden for Farm Credit System (FCS or System) institutions. Several System institutions responded to our June 2008 notice of intent inviting comments on FCA regulations that may duplicate other requirements, are ineffective, or impose burdens that are greater than the benefits received. In response to some of those comments, we plan to publish a direct final rule separately in the **Federal Register** to make technical changes and corrections to some of our regulations. This notice of intent responds to the comments that address regulatory projects we have identified for FCA consideration and regulations we are not changing at this time.

**FOR FURTHER INFORMATION, CONTACT:**

Jacqueline R. Melvin, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or

Mary Alice Donner, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

### I. Background

On June 23, 2008, we published a notice of intent in the **Federal Register** inviting the public to comment on FCA regulations that may duplicate other requirements, are ineffective, or impose burdens that are greater than the benefits received. *See* 73 FR 35361. We specifically requested comments on regulations concerning (1) assessment and apportionment of administrative expenses, (2) loan policies and