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Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 59

[Doc. No. AMS–LS–11–0049]

Livestock Mandatory Reporting Program; Establishment of the Reporting Regulation for Wholesale Pork

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: On April 2, 2001, the U.S. Department of Agriculture, Agricultural Marketing Service (AMS) implemented the Livestock Mandatory Reporting (LMR) program as required by the Livestock Mandatory Reporting Act of 1999 (1999 Act). In October 2006, the LMR program was reauthorized by Congress through September 2010. On September 28, 2010, the Mandatory Price Reporting Act of 2010 (2010 Reauthorization Act) reauthorized LMR for an additional 5 years and added a provision for mandatory reporting of wholesale pork cuts. The 2010 Reauthorization Act directed the Secretary to engage in negotiated rulemaking to make required regulatory changes for mandatory wholesale pork reporting and establish a negotiated rulemaking committee to develop these changes. This proposed rule reflects the work of the USDA Wholesale Pork Reporting Negotiated Rulemaking Committee (Committee).

DATES: Written comments must be received by May 22, 2012. Written comments on the information collection and recordkeeping provisions of this proposed rule must be received by May 22, 2012.

ADDRESSES: Comments should be submitted electronically at *http://www.regulations.gov.* Comments may also be sent to Michael Lynch, Director; USDA, AMS, LS, LGMN Division; 1400 Independence Ave. SW., Room 2619–S; Washington, DC 20250; Telephone number (202) 720–6231; or Fax (202) 690–3732.

Comments should reference docket number AMS–LS–11–0049 and note the date and page number of this issue of the **Federal Register**. Submitted comments will be available for public inspection at *http://www.regulations.gov,* or during regular business hours at the above address. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

Comments that specifically pertain to the information collection and recordkeeping requirements of this action should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael Lynch, Director; USDA, AMS, LS, LGMN Division; 1400 Independence Ave. SW., Room 2619–S; Washington, DC 20250; at (202) 720–6231; fax (202) 690–3732, or email *Michael.Lynch@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The 1999 Act was enacted into law on October 22, 1999 (Pub. L. 106–78) as an amendment to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627, 1635–1638d). The purpose of the 1999 Act was to establish a program of information regarding the marketing of cattle, swine, lambs, and the products of such livestock that provides information that can be readily understood by producers; improves the price and supply reporting services of USDA; and encourages competition in the marketplace for livestock and livestock products. On December 1, 2000, AMS published the final rule to implement the LMR program as required by the 1999 Act (65 FR 75464) with an effective date of January 30, 2001. This effective date was subsequently delayed until April 2, 2001 (66 FR 8151).

The statutory authority for the program lapsed on September 30, 2005. At that time, AMS sent letters to all packers required to report under the 1999 Act requesting they continue to submit information voluntarily. In October 2006, Congress passed the Livestock Mandatory Reporting Reauthorization (2006 Reauthorization Act) (Pub. L. 109–296). The 2006 Reauthorization Act re-established the regulatory authority for the continued operation of the LMR program through September 30, 2010, and separated the reporting requirements for sows and boars from barrows and gilts, among other changes. On May 16, 2008, USDA published the final rule to re-establish and revise the LMR program (73 FR 28606). The rule incorporated the swine reporting changes contained within the 2006 Reauthorization Act, as well as enhanced the program's overall effectiveness and efficiency based on AMS's experience in the administration of the program. The LMR final rule became effective on July 15, 2008.

The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–234) directed the Secretary of Agriculture (Secretary) to conduct a study to determine advantages, drawbacks, and potential implementation issues associated with adopting mandatory wholesale pork reporting. The report from this study concluded that voluntary negotiated wholesale pork price reporting is thin, and becoming thinner. It also found some degree of support for moving to mandatory price reporting at every segment of the industry interviewed, and that the benefits likely would exceed the cost of moving from a voluntary to a mandatory reporting program for wholesale pork. The report was delivered to Congress on March 25, 2010. A copy of the full report is available on the AMS Web site at *http://www.ams.usda.gov/AMSv1.0/marketnews* by clicking on ''Livestock, Meats, Grain, and Hay,'' then ''Livestock Mandatory Reporting.''

On September 28, 2010, the 2010 Reauthorization Act (Pub. L. 111–239), reauthorized LMR for an additional 5 years and added a provision for mandatory reporting of wholesale pork cuts. The 2010 Reauthorization Act directed the Secretary to engage in negotiated rulemaking to make required regulatory changes for mandatory wholesale pork reporting and establish a negotiated rulemaking committee to develop these changes. The statute required that the committee include representatives from (i) organizations representing swine producers; (ii) organizations representing packers of pork, processors of pork, retailers of pork, and buyers of wholesale pork; (iii) the Department of Agriculture; and (iv) interested parties that participate in swine or pork production.

Further, the 2010 Reauthorization Act stated that any negotiated rulemaking committee established by the Secretary would not be subject to the Federal Advisory Committee Act (5 U.S.C. Appendix 2).

Purpose of Regulatory Action

The objective of this rule is to improve the price and supply reporting services of AMS in order to encourage competition in the marketplace for wholesale pork products by increasing the amount of information available to participants. This is accomplished through the establishment of a program of information regarding the marketing of wholesale pork products as specifically directed by the 1999 Act, the 2010 Reauthorization Act, and these proposed regulations, as described in detail in the background section. Further, a mandatory wholesale pork reporting program will address concerns relative to the asymmetric availability of market information. Pork processors are not currently required by law to report wholesale pork cut prices. Rather, AMS collects information on daily sales and price information from pork processors on a voluntary basis. The 2008 Farm Bill directed the Secretary to conduct a study to determine advantages, drawbacks, and potential implementation issues associated with adopting mandatory wholesale pork reporting. The study found that wholesale pork price reporting is thin, and results in frequent missing or unreportable price quotes for subprimals.

This proposal is done in accordance with the Mandatory Price Reporting Act of 2010 (2010 Reauthorization Act) [Pub. L. 111–239], which reauthorized Livestock Mandatory Reporting for 5 years and required the addition of wholesale pork through negotiated rulemaking.

Summary of the Major Provisions of the Regulatory Action in Question

This proposed rule requires packers to report wholesale pork sales to AMS. Specifically, the proposed rule outlines what information packers will be required to submit to AMS, how the information should be submitted, and other program requirements. Packers will be required to submit the price of each sale, quantity, and other characteristics (e.g., type of sale, item description, destination) that AMS will use to produce timely, meaningful market reports.

Costs and Benefits

The benefits of this proposed rule are diffuse and difficult to quantify, therefore, this analysis considers benefits only on a qualitative basis. The qualitative benefits derived from the literature and are:

1. The increased number of firms reporting prices to AMS under the mandatory program will provide a more complete data set, leading to increased price transparency and more efficient price discovery;

2. Allows AMS more opportunity to keep wholesale pork reporting current with industry marketing practices and product offerings; and

3. Provides information to industry participants that cannot afford to purchase data, including small pork processing operations, small wholesalers and retailers, and direct and niche marketing operations.

The major cost of complying with this rule involves the information collection and reporting process. The regulatory objective of this proposed rule is to increase the amount of information available to participants in the marketplace for wholesale pork and pork products by mandating reporting of market information by certain members of the industry. The Committee developed the proposed rule to achieve this objective in the most cost-effective manner possible. To the extent practicable, the Committee drew upon current industry practices and reporting procedures for other commodities covered by LMR in order to minimize the burden to the industry.

Annual industry costs are expected to be $95,770. These represent start-up costs associated with information technology enhancements, recordkeeping, and submission costs. The annual cost for each of the 56 respondents is estimated to be $1,710. Total annual cost to the government is expected to be approximately $300,000. This is largely for salaries and benefits for personnel who will collect, review, assemble, and publish market reports on wholesale pork. Additional costs of approximately $325,000 will be incurred in the first year to accommodate information technology system development. A complete discussion of the cost and benefits can be found under the discussion of Executive Order 12866.

Negotiated Rulemaking Committee

Negotiated rulemaking is a procedure authorized by the Negotiated Rulemaking Act of 1996 (NRA) (5 U.S.C. 561–570) in which a proposed rule is developed by a committee composed of people representing interests that will be significantly affected by the rule, and the rulemaking agency. Experience of various Federal agencies in negotiated rulemaking demonstrated that using a trained neutral party to facilitate the process assists parties during negotiations in identifying their real interests, evaluating their positions, communicating effectively, and reaching consensus where possible. AMS engaged the Federal Conciliation and Mediation Service—a government agency providing mediation, arbitration, negotiation, and related services for government agencies and industry—for this purpose.

On November 24, 2010, AMS published a notice announcing its intent to convene a negotiated rulemaking committee (75 FR 71568). The notice sought public comment on the need for the committee and on its proposed membership, and provided others interested in being committee members the opportunity to submit nominations. AMS proposed a number of organizations for membership on the committee that represented those interests required to be included on such a committee by the 2010 Reauthorization Act.

Additionally, AMS solicited nominations from affected organizations who also wanted to be represented on the committee. In determining membership, AMS considered whether the interest represented by a member will be affected significantly by the final product of the committee and whether that interest was already adequately represented by other members. Under section 562(5) of the NRA, ''interest'' means ''with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner.'' In accordance with the NRA, committee membership was limited to a maximum of 25 members.

On January 26, 2011, AMS announced the establishment of the Wholesale Pork Reporting Negotiated Rulemaking Committee (Committee); responded to comments from the November 24, 2010, notice; identified the final list of members; and set forth the dates for the first meeting (76 FR 4554).The Committee members were:

American Meat Institute;
Chicago Mercantile Exchange;
Food Marketing Institute;

Grocery Manufacturers Association;
Livestock Marketing Information Center;
National Farmers Union;
National Livestock Producers Association;
National Meat Association;
National Pork Producers Council;
North American Meat Processors Association, American Association of Meat Processors, and Southeastern Meat Association (1 combined representative for all three per organizations' request);
United Food and Commercial Workers Union; and
USDA, Agricultural Marketing Service.

On February 8–10, 2011, the Committee met in St. Louis, Missouri. Notably, during this meeting, the Committee members developed ground rules that addressed general rules of conduct, participation, and reiterated the Committee's purpose. The ground rules also established that all decisions would be made by ''consensus,'' and defined ''consensus'' as unanimous concurrence among the Committee members. The Committee held second (76 FR 12887) and third (76 FR 23513) meetings in Arlington, Virginia; March 15–17, 2011, and May 10–11, 2011, respectively.

All meetings were open to the public without advance registration. Members of the public were given opportunities to make statements during the meetings at the discretion of the Committee, and were able to file written statements with the Committee for its consideration. Meeting minutes from all Committee proceedings and supporting materials can be found at *www.ams.usda.gov/NegotiatedRulemaking.*

Proposed Requirements

As previously discussed, the Committee was tasked with negotiating and developing a proposed rule to implement mandatory reporting of wholesale pork. In doing so, the Committee determined what characteristics describing sales of wholesale pork should be reported to AMS to allow the promulgation of meaningful, timely reports. These requirements are discussed in detail in the sections immediately following and represent the information on price, volume, and related characteristics of wholesale pork sales that packers will be required to submit under LMR.

According to the LMR program (7 CFR part 59), a packer, for purposes of swine and wholesale pork reporting, is defined as any person engaged in the business of buying swine in commerce for the purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats of meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. For any calendar year, the term ''packer'' includes only federally inspected swine processing facilities that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years and a person that slaughtered an average of at least 200,000 sows, boars, or combination thereof per year during the immediately preceding 5 calendar years. Additionally, in the case of a swine processing plant or person that did not slaughter swine during the immediately preceding 5 calendar years, it shall be considered a packer if the Secretary determines the processing plant or person should be considered a packer under this subpart after considering its capacity.

For the ease of the reader, this section is organized by topic andhighlights discussion for the proposed changes as considered by the Committee.

Definition of Wholesale Pork

The term ''wholesale pork'' presented in this proposed rule reflects only product that the Committee feels adequately represents the wholesale market. The Committee carefully considered the inclusion, or exclusion, of items that would not represent what is widely considered wholesale pork to packers, processors, retailers, and others in the supply chain. For example, it was determined that items with commonly-added ingredients used to extend shelf life, such as a salt or sodium phosphate solution, would be included. However, items that are flavored (e.g., teriyaki pork tenderloins, seasoned ribs, lemon pepper sirloin roasts) would not be considered wholesale pork and would therefore be excluded from LMR reporting requirements. The Committee also discussed whether or not variety meats and offal should be included in the proposed definition of wholesale pork. It was determined that offal (e.g., heart, kidney) would not be considered wholesale pork; whereas processing floor variety meats that are harvested from the chilled carcass—such as neck bones, tails, skins, feet, hocks, jowls, and backfat—would be considered wholesale pork and would be reported. Committee consensus on the definition of wholesale pork requires variety meats to be reported, and refers to a separate new definition for variety meats as proposed herein. Definitions for wholesale pork and variety meats appear in the proposed revisions to section 59.200.

Reporting Times

The Committee discussed daily reporting times and reached consensus on twice a day (by 10 a.m. and 2 p.m. Central Time) for barrow and gilt product and once per day (by 2 p.m. Central Time) for sow and boar product. These reporting times are outlined in proposed new section 59.205, and are consistent with reporting times for other commodities covered under LMR. For sow and boar plants, the Committee agreed that reporting once per day was practical. Separation of the reporting requirements for sow and boar product is being proposed to minimize the reporting burden on sow and boar packers where possible and to make the information published for sow and boar products more meaningful to the industry. As a general rule, these plants slaughter fewer animals than their counterparts who primarily slaughter barrows and gilts, and would therefore have a lower number of reportable transactions. Further, publishing sow/boar product information twice daily would provide little benefit in terms of added market transparency, as prices in this sector of the market fluctuate less than in the barrow/gilt market. Many of the plants producing this type of product would be smaller in nature and it would be unnecessarily burdensome to require twice daily reporting. The Committee agreed that reporting this type of product once per day meets the industry's needs.

Price Reporting Basis

Over the course of the three meetings, price reporting basis generated significant discussion by the Committee. There was Committee discussion regarding two different reporting methods that could be proposed for pork mandatory reporting: Free-on-Board (F.O.B.) Omaha basis, which was used for the voluntary program, and F.O.B. Plant basis, which is currently used for mandatory reporting of boxed beef and lamb. Committee members who indicated a preference for reporting F.O.B. Plant basis stated that reporting prices on this basis would reflect the actual transaction that occurred within the marketplace without additional adjustments for a centralized reporting location. Further, there was concern expressed that reporting swine purchases on a plant delivered basis (as is currently the case under LMR for swine) and pork on an F.O.B. Omaha basis would make data comparison difficult. Committee members who indicated a preference for reporting prices on an F.O.B. Omaha basis cited the desire for consistency with current practice, among other factors. During the final meeting, the Committee reached consensus that prices would be reported on both an F.O.B. Omaha basis and F.O.B. Plant basis.

The Committee agreed that F.O.B. Omaha basis will be calculated using freight information provided by AMS. While this information is not intended for inclusion in the regulations, AMS is outlining its plan to assist reporting entities. The Committee believed that this requirement for all packers to utilize the same conversion methodology provides greater consistency with these reported prices, and is conducive to the audit process implicit with LMR. As reflected in the draft regulatory language, AMS will develop freight adjustment information for use in developing F.O.B. Omaha prices. AMS considered two options in developing this information to derive F.O.B. Omaha prices—a freight map with concentric zones that reflect different freight adjustments based on a shipping destination's distance from Omaha and a per loaded mile freight rate. A zone map could prove to be difficult for reporting entities to comply with as it would not be practical to display every U.S. city, nor to expect reporting entities to know which cities belong in which zones. AMS believes a simpler option is to establish a per loaded mile freight rate that packers could apply. For example, to determine the F.O.B. Omaha price for a load of pork loins shipped to Phoenix, Arizona, the packer would figure the distance from Omaha to Phoenix and multiply that distance by the per loaded mile rate, which would then be divided by the total hundredweight of the product being shipped. This resulting freight expense would be deducted from the actual delivered price per hundredweight to reflect the FOB Omaha price to be submitted to AMS. AMS also believes this method would be easier for reporting packers to comply with and document for audit purposes. Based on information gathered from various sources on transportation costs, AMS believes that, if the freight rate would be applied today, that per loaded mile rate would be $2.11. Once the final rule is in place, AMS would reevaluate the per loaded mile rate on a quarterly basis.

The Committee considered other price-determining characteristics as they relate to the reporting requirements of LMR. For example, the Committee reached consensus that the price reported to AMS shall include any applicable brokerage fees, but should not include any direct, specific, and identifiable marketing costs (such as point of purchase material, marketing funds, accruals, rebates, and export costs). Removing these types of additional costs provides AMS a more homogeneous price for reporting purposes. Furthermore, the Committee agreed that it would be overly burdensome on reporting entities and provide little utility for market reports to include costs for things such as accruals or rebates as many of these costs are not known at the time of transaction. The requirements for reporting prices of wholesale pork sales are outlined in proposed section 59.205.

Product Characteristics

The Committee reached consensus on the type of information packers will report to AMS as part of mandatory wholesale pork reporting. These items are discussed below and are outlined in the proposed section 59.205.

Type of Sale. Committee members reached consensus on the types of sales of wholesale pork that must be reported. The Committee identified and defined three types of sale: negotiated, forward, and formula marketing arrangement. When packers report sales of wholesale pork to AMS, they will be identified using one of these three categories. For negotiated sale, the Committee desired to capture the traditional ''spot'' market, and therefore crafted a proposed definition that sets delivery parameters for both boxed product (within 14 days of the date of agreement) and combo product (within 10 days of the date of agreement). Additionally, there was discussion regarding which day would be considered ''Day 1'' for reporting purposes. It was agreed by the Committee that the day after the seller-buyer agreement shall be considered ''Day 1'' for reporting delivery periods to ensure consistency with current industry practices.

For the definition of a forward sale, the Committee desired to establish these types of transactions as occurring outside the traditional negotiated, or spot, window. Therefore, the Committee agreed that the proposed definition for forward sale means an agreement for the sale of pork where the delivery is beyond the timeframe of a negotiated sale and means a sale by a packer selling wholesale pork to a buyer of wholesale pork under which the price is determined by seller-buyer interaction and agreement. The Committee also agreed that the definition proposed for formula marketing arrangement bases the price paid not on seller-buyer interaction and agreement on a given day, but instead is established in reference to publicly-available quoted prices. The proposed definitions for the terms ''Type of sale,'' ''Negotiated sale,'' ''Forward sale,'' and ''Formula marketing agreement'' appear in proposed section 59.200.

Specifications. The Committee discussed the options for submitting data to AMS on cuts of pork according to Institutional Meat Purchase Specifications (IMPS), as is commonly used with mandatory boxed beef trade. It was decided that IMPS are not widely used in the wholesale pork trade, and therefore, would not be good descriptors of product specifications. Instead, the Committee decided that a description of the specifications of each pork item being transacted (e.g., vacuum-packed ¼ inch loins) would be submitted to AMS and then the agency would group like products together for the purpose of publishing reports. The item's specification would also contain weight ranges for the product. Characteristics that entities would be required to report are outlined in proposed section 59.205 (a)(1).

The Committee also discussed whether or not to include a provision in the proposed rule that requires packers to submit product yield data to AMS. It was discussed in Committee meetings that this information was needed to calculate the daily pork carcass cutout. The pork carcass cutout is an estimate of the value of a hog carcass based upon current wholesale prices for sub-primal pork cuts reported to AMS. The cutout provides an indication of the overall supply and demand situation of the wholesale pork cuts market. A composite value is calculated each day for the various pork primals and these values are aggregated to reflect a single composite value of a pork carcass. These cuts reflect a standard cutting specification and must be traded on a negotiated basis to deliver within 10 working days of the time of sale for combo items (processing cuts) and 14 working days for boxed items (retail cuts). It was decided by the Committee that packers would provide the necessary product yield information voluntarily to AMS upon request and, therefore, was not included in the Committee's proposed rule.

Product Delivery Period. Under the existing voluntary pork reporting program, the delivery period for negotiated pork trades is measured in working days rather than calendar days. It was decided by the Committee that the product delivery period should be reported in calendar days to be consistent with the requirements for boxed beef and boxed lamb. This reportable characteristic is outlined in proposed section 59.205 (a)(1).

Pork class. The Committee considered the categories of pork class, which describes the type of swine from which the product was derived, and reached consensus that there should be three categories for reporting product: barrow/gilt, sow, and boar. This reportable characteristic is outlined in proposed section 59.205 (a)(1). Further, a proposed definition for ''pork class''appears insection 59.200.

Destination. The Committee agreed to add ''Destination'' as a characteristic of each sale and discussed how to report export product, especially if the report's primary objective is to capture sales within the United States. It was agreed that packers would report products' destination in one of three categories: Domestic, Export overseas, or North American Free Trade Agreement (NAFTA).

Refrigeration. Consensus was reached by the Committee that a product's refrigeration type should be reported to AMS to be used as a means for distinguishing fresh product transactions that may be discounted or priced differently due to age of the product. Splitting the fresh category into two product age groups would provide a means for identifying product that may be discounted due to potential shelf life limitations. The Committee determined that ''Day 1'' should be considered the day after production. The form contained in Appendix A provides timeframes against which packers should report product refrigeration.

Specialty Pork Products. The Committee included a reporting category for specialty pork products in order to capture trade of wholesale pork that is produced or marketed under any specialty program, such as genetically-selected pork, certified programs, or specialty selection programs for quality or breed characteristics. It was noted by the Committee that AMS publishes similar information reported under the boxed beef program for ''branded'' programs. It was agreed by the Committee that a trademark brand on a product would not by itself make the product a specialty pork product, as outlined in the proposed definition in section 59.200.

General Provisions

As discussed, the Committee developed proposed changes to 7 CFR part 59, Livestock Mandatory Reporting, to incorporate wholesale pork into LMR. Subpart A of part 59, General Provisions, addresses requirements pertinent to all aspects of mandatory reporting. Some changes are necessary to fully incorporate wholesale pork into Subpart A, and are largely administrative in nature. These conforming changes, as they appear in the proposed regulatory text, were presented by AMS and adopted by the Committee. Some sections in Subpart A remain unchanged, but are discussed here to provide context for the reader.

Section 59.10 details how packers would be required to report information and how reporting will be handled over weekends and holidays. The information will be reported to AMS by electronic means. Electronic reporting involves the transfer of data from a packer's electronic record keeping system to a centrally located AMS electronic database. The packer is required to organize the information in an AMS-approved format before electronically transmitting the information to AMS. Once the required information has been entered into the AMS database, it will be aggregated and processed into various market reports which will be released according to the daily and weekly time schedule set forth in these regulations. Information regarding the specific characteristics of each reported sale must be supplied by lot without aggregation. No changes are proposed for section 59.10 to accommodate the additional requirement of reporting wholesale pork cuts.

This proposed rule requires the reporting of specific market information regarding the sales of wholesale pork products.

Section 59.20 is proposed to be amended by the addition of (f), *Reporting Sales of Wholesale Pork.* In addition to the aforementioned reporting requirements, packers would be required to maintain a record to indicate the time a unit of wholesale pork cuts was sold, as occurring either before 10 a.m. central time, between 10 a.m. and 2 p.m. central time, or after 2 p.m. central time. To allow packers time to collect, assemble, and submit the information to AMS by the prescribed deadlines, all covered transactions up to within one half hour of the specified reporting times are to be reported.

Further, section 59.20 identifies the recordkeeping requirements imposed by the 1999 Act and regulations on reporting entities. Reporting packers are required to maintain and to make available the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock and livestock products. In addition, they are required to maintain such records or other information as is necessary or appropriate to verify the accuracy of the information required to be reported under these regulations. All of the above mentioned paperwork must be maintained for at least 2 years and must be made available to employees or agents of USDA for routine compliance audits, as well as for investigations involving suspected noncompliance or potential violations. More information regarding compliance and review procedures can be found in the LMR Information section of the Livestock and Grain Market News Web site at *http://marketnews.usda.gov/portal/lg.*

Lastly, under Subpart A, section 59.30 details the general definitions of terms used throughout the regulations and applicable to all subparts. Where definitions apply to only one reportable commodity, those are included in the appropriate subpart. For example, definitions that pertain only to swine and swine products are contained in Subpart C and are proposed herein accordingly. The majority of definitions in section 59.30 remain unchanged from those that were published in the 2008 final rule. Changes to section 59.30 as a result of the addition of wholesale pork are found in the definitions for the terms ''F.O.B.'' and ''Lot.'' The change to F.O.B. is proposed to reflect the Committee's desire to have prices reported on both a plant and Omaha basis. The proposed change to the term ''Lot'' adds wholesale pork. There is also an administrative change proposed to the definition of IMPS to update a Web site address and phone number.

Other Provisions

The 1999 Act set forth the requirements for maintaining confidentiality regarding the packer reporting of proprietary information and list the conditions under which Federal employees can release such information. While none of these provisions were amended by the 2010 Reauthorization Act or were proposed for amendment by the Committee, they are presented here for information. These administrative provisions also establish that the Secretary can make necessary adjustments in the information reported by packers and take action to verify the information reported, and directs the Secretary to report and publish reports by electronic means to the maximum extent practical. The 1999 Act provides for what constitutes violations of that Act, such as failure to report the required information on time or failure to report accurate information.

The section on enforcement establishes a civil penalty of $10,000 for each violation and provides for the Secretary's issuance of cease and desist orders. This section also provides for notice and hearing of violations before the Secretary, judicial review, and issuance of an injunction or restraining order. The fees section directs the Secretary to not charge or assess fees for the submission, reporting, receipt, availability, or access to published reports or information collected through this program. The section on recordkeeping requires each packer to make available to the Secretary on request for 2 years the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock and livestock products, as well as such records or other information that is necessary or appropriate to verify the accuracy of information required to be reported. Also, the 1999 Act provides that reporting entities will not be required to report new or additional information that they do not generally have available or maintain, or the provisions of which would be unduly burdensome.

Committee Recommendations

As noted, the Committee's work focused on developing regulatory text to implement mandatory wholesale pork reporting under the LMR program. The Committee also developed several recommendations that, while outside their statutory purview, warrant discussion here. The Committee recommended that AMS implement a transition period that would continue voluntary reporting methodology until 12 months after the commencement of mandatory reporting; allow for a 12 month beta testing period for the new mandatory system; and release mandatory data publicly each Monday for the previous week. The Committee asserts that this would minimize market disruption.

Based on these recommendations, AMS plans to transition from a voluntary program to a mandatory program by publishing ''dual'' reports for 6 months. That is, for a period of time, AMS will publish reports reflecting information collected under a voluntary reporting system and reports reflecting information collected under a mandatory reporting system for wholesale pork. If AMS determines that the information collected under a voluntary program becomes of little utility before the 6-month mark or if sufficient AMS resources are not available, it will cease collecting and publishing this information. On the contrary, if at the end of the 6-month period any problems still exist with the collection or publication of data, or if the cessation of dual reports would unnecessarily cause market disruption, AMS will consult with the industry to determine an appropriate course of action. In that instance, AMS would consider extending the dual reporting period until a full 12 month period has occurred. Further, during the transition period, AMS intends to publish reports reflecting information collected under the mandatory program on a delay and will consider the Committee's recommendation regarding the appropriate time to release such reports.

In regards to testing of the information technology systems, AMS understands that affected entities (*i.e.,* packers) will not effectively be able to make enhancements to their reporting systems until the requirements are known, that is, until then final rule is published. AMS will work with packers to ensure that an appropriate amount of time is allowed for development and testing of systems necessary to submit the required data.

It should also be noted that many of the Committee's recommendations, which can be found at *www.ams.usda.gov/negotiatedrulemaking,* are contained in the proposed regulatory text.

OMB Control Numbers

Subpart E of part 59 covers the OMB control number 0581–0186 assigned pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35) for the information collection requirements listed in Subparts B through D of part 59. All required information must bereported to AMS in a standardized format. The standardized form is embodied in the data collection form that is contained in Appendix A and described in Appendix B at the end of this document.

For reporting wholesale pork information, swine packers will utilize one form (Appendix A). This additional reporting requirement does not impact the reporting requirement that packers may have for other reportable commodities, such as swine.

Appendices

The final section of this document contains two appendices. These appendices will not appear in the Code of Federal Regulations. Appendix B describes the form that will be used by those required to report information under this program. The actual form is contained in Appendix A.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. Section 259 of the 1999 Act prohibits States or political subdivisions of a State to impose any requirement that is in addition to, or inconsistent with, any requirement of the 1999 Act with respect to the submission or reporting of information, or the publication of such information, on the prices and quantities of livestock or livestock products. In addition, the 2010 Reauthorization Act 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. 181–229); administer, enforce, or collect voluntary reports under the 1999 Act, the 2006 Reauthorization Act, or any other law; or access documentary evidence as provided under sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 41–58). There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons that are employees of the entities that are subject to this regulation. This proposed rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this proposed rule would not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

Executive Order 13132

This proposed rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a Federal statute to preempt State law only when the statute contains an express preemption provision. This rule is required by the 1999 Act. Section 259 of the 1999 Act, federal preemption, states, ''In order to achieve the goals, purposes, and objectives of this title on a nationwide basis and to avoid potentially conflicting State laws that could impede the goals, purposes, or objectives of this title, no State or political subdivision of a State may impose a requirement that is in addition to, or inconsistent with, any requirement of this subtitle with respect to the submission or reporting of information, or the publication of such information, on the prices and quantities of livestock or livestock products.''

Prior to the passage of the 1999 Act, several States enacted legislation mandating, to various degrees, the reporting of market information on transactions of cattle, swine, and lambs conducted within that particular State. However, since the nationalLMR program was implemented on April 2, 2001, these State programs are no longer in effect. Therefore, there are no Federalism implications associated with this rulemaking.

Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

Regulations must be designed in the most cost-effective manner possible to obtain the regulatory objective while imposing the least burden on society. This proposed rule would amend the LMR regulations to implement mandatory wholesale pork reporting and was developed by the Committee, comprising organizations representing pork packers, processors, retailers, and buyers of wholesale pork; swine producers; USDA; and other interested parties.

Alternatives to the proposed language were thoroughly discussed during the course of the negotiated rulemaking meetings, and the consensus language reflects the best efforts of all participating parties to ensure the successful implementation of wholesale pork reporting. These alternatives are reviewed in detail in the ''Proposed Requirements'' section of this preamble.

Since all of the entities who will be required to report wholesale pork sales already report information under LMR regarding their swine purchases, costs to reporting another commodity are expected to be minimal. A complete analysis of the number of affected entities and the required volume of reporting is discussed under the Paperwork Reduction Act (PRA) section following this section.

Currently, pork processors are not required by law to report wholesale pork cut prices. Rather, AMS collects information on daily sales and price information from pork processors on a voluntary basis. The 2008 Farm Bill directed the Secretary to conduct a study to determine advantages, drawbacks, and potential implementation issues associated with adopting mandatory wholesale pork reporting. The study found that voluntary wholesale pork price reporting is thin, and results in frequent missing or unreportable price quotes for subprimals. The number of missing data has increased over time.

In addition, changes in the way pork is traded in recent years have led to inconsistencies in industry practices and current AMS guidelines for defining reportable trades. The study found that more pork is being: (1) Traded in forms that are either not reported or not reportable (e.g., enhanced product, case ready product, branded product, or frozen product); (2) transacted through intra-firm transfer, through inter-firm transfer, through formula pricing, through forward price contracts well in advance of delivery (beyond 7 or 10 days forward as used by AMS); and (3) destined for export markets which are excluded from AMS pork price reports for the negotiated cash guidelines used by AMS.

As a result of thin pork price reporting, industry participants have raised concerns about potential selective price reporting in the voluntary program. These concerns have reduced the perceived value of published price reports to the industry. The study found support for mandatory price reporting throughout the industry, and concluded that the benefits likely would exceed the cost of moving from a voluntary to a mandatory reporting program for wholesale pork.

The benefits of this proposed rule are diffuse and difficult to quantify, therefore, this analysis considers benefits only on a qualitative basis. A complete discussion of the benefits is found in the summary of benefits section. The major cost of complying with this rule involves the information collection and reporting process. The information collection and reporting process is explained in the Summary of Costs section and is referenced in section 59.10(f), Reporting Methods. A complete discussion of the cost analysis can be found in the summary of costs section.

Summary of Benefits. Government intervention in a market is conducted because the free market has tendencies to fail whenever certain criteria hold. Market failures occur in cases such as public goods, externalities, and asymmetric and/or missing information problems appear. Agricultural markets in particular are subject to information asymmetry, with both large and small operators in every aspect of the value chain, ranging from multinational corporations to part-time operators. Agricultural markets are also characterized by a large degree of uncertainty and missing information.

In 2001, George Akerloff, Michael Spence, and Joseph Stiglitz [1] won the Nobel Prize in Economics for their seminal work on the Economics of Information, establishing it as a field within economics. Their combined works showed that: (1) Even small gaps in information can cause a misallocation of resources; (2) attempts to gather information by market participants generally incur costs that may not be recouped; (3) participants may turn to the use of nonmarket ''signaling'' to gather information, rather than the price mechanism; (4) attempts to obtain information by the participants may themselves cause sufficient levels of distortion in the markets, even with small information costs; and (5) the existence of other market failures can alter the individual's valuation of the benefits and costs of information.[2] Each of these situations can lead to either a failure to attain an efficient equilibrium, or may lead to multiple equilibriums, both of which reduce economic welfare. Failure to achieve an equilibrium outcome can result in the failure of supply and demand to intersect at an equilibrium point, with persistent surpluses or shortages in the market.

The wholesale pork reporting study mandated by Congress found evidence consistent with Akerloff, *et al.,* and

[1] ''The SverigesRiksbank Prize in Economic Sciences in Memory of Alfred Nobel 2001.'' *Nobelprize.org.* 7 Sep 2011 available at *http://www.nobelprize.org/nobel_prizes/economics/laureates/2001/.*

[2] Stiglitz, J.E. ''The Contributions of the Economics of Information to Twentieth Century Economics.'' 2000. The Quarterly Journal of Economics 115(November):1441–1478.

indicates that mandatory price reporting will improve information in the wholesale pork market. Following the results of Akerloff, *et al.* cited above, this report found that: (1) The wholesale pork reporting information under the voluntary program is thin, getting thinner, and does not properly reflect changes in the pork market in recent years. Mandatory reporting would improve this situation by increasing the number of reporting firms, including sow/boar meat in the reporting, responding to changes in the marketing of pork and pork products, and reducing the number of missing price quotes, particularly for subprimals; (2) Data users will have improved information without incurring additional costs such as private market analyses and data subscriptions, which may be too costly for small producers, small packers, small processors, and other data users; (3) Mandatory price reporting will lead to increased transparency in prices and more efficient price discovery. In addition, price data will be more consistent with current trade practices, providing more clear-cut market information, and less need for ''signaling;'' (4) Mandatory wholesale pork price reporting will reduce concerns the industry now has about selective price reporting, which can potentially distort market information; and (5) Mandatory wholesale pork price reporting will benefit small market participants to a greater extent than larger participants, who are likely to have more information available to them than the smaller participants, although larger firms with more staff may have greater ability to analyze the data than small firms. The report concluded that mandatory wholesale pork reporting would reduce the inequities in market information and create a more competitive environment.

These findings indicate that mandatory price reporting will be an improvement over the current voluntary program, and that market efficiency as well as overall economic welfare will be increased by implementing the mandatory price reporting program for pork and pork products. Research on existing mandatory livestock price reporting also supports this conclusion.

Early research on problems associated with pricing in livestock markets often considered the distinction between price determination and price discovery, and the resulting issues faced by livestock producers in a particular market. Ward and Schroeder (2009) [3] describe the difference between price determination and price discovery by noting that price determination is the interaction of supply and demand factors in a broad market situation to determine the general price level. Price discovery is the process whereby buyers and sellers interact in a specific market at a specific time to ascertain the value of a commodity in that market at that time. Price discovery involves the consideration of multiple factors, including market structure, futures prices and risk management options. However, the first consideration in price discovery is typically the general market price level, *i.e.* price determination is the starting point for price discovery.

The importance of price reporting by AMS is that it provides data that gives market participants knowledge of the general price levels of a commodity, as well as insight into the overall conditions in that market. This information assists participants in more effectively discovering prices in their specific market.

Research on livestock mandatory pricing has demonstrated that mandatory pricing does increase transparency and improves the efficiency of the price discovery process. Ward (2004a and b) [4] found that mandatory price reporting increased information, showing mandatory reports significantly improved the amount, type, and timeliness of data related to captive supplies, and increasing transparency. USDA's Economic Research Service (ERS) (Perry, MacDonald, Nelson, Hahn, Arnade and Plato, 2005) [5] extended Ward's work, yielding similar results. ERS also found that prices were twice as volatile under the mandatory system than under the voluntary system. The reason was thought to be the filtering or interpretive role of market reporters under voluntary reporting relative to the reduced filtering role with mandatory reporting.

Koontz (2007) [6] studied the vertical relationship between the national fed cattle price and boxed beef cutout values using a standard price transmission models. He found boxed beef cutout values had both a greater and quicker impact on fed cattle than before the mandatory program. However, he also detected more uncertainty. This supports earlier research indicating both increased transparency and increased volatility associated with mandatory reporting. In addition, Lee, Ward and Brorsen (2011) [7] examined the role of cash prices in price discovery for fed cattle and hogs as cash market share fell over the years of 2001–2010. They found that the cash market remains important for price discovery, although thinning of the cash market has had a negative impact on the process.

As the wholesale pork study indicated, there are some market participants who are likely to benefit more than others. Niche and direct marketing producers are likely to benefit from improved data, as they are less likely to be able to have other means of price determination available to them, primarily due to cost. These producers account for a small but growing segment of U.S. agriculture.

In summary, research on existing livestock mandatory price reporting has demonstrated that it has improved transparency issues in livestock markets, enabling more efficient and effective price discovery in these markets, although there has been increased variability in reported prices, largely due to the change in approach from voluntary to mandatory. This improved transparency and increased efficiency is consistent with economic theory of information. The wholesale pork reporting study mandated by Congress shows evidence that mandatory reporting will have a similar impact on the wholesale pork market.

For the economic analysis of the rule, AMS was unable to determine a quantitative assessment of the benefits due to limitations on existing research and the disparate nature of the benefits to be achieved. The qualitative benefits derived from the literature and are:

4. The increased number of firms reporting prices to AMS under the mandatory program will provide a more complete data set, leading to increased price transparency and more efficient price discovery;

5. Allows AMS more opportunity to keep wholesale pork reporting current with industry marketing practices and product offerings; and

[3] Ward, C.E. and T.C. Schroeder.''Understanding Livestock Pricing Issues.'' Oklahoma Cooperative Extension Fact Sheet, AGEC–551 August 2009.

[4] Ward, C.E. ''Captive Supply Trends since Mandatory Price Reporting.'' Oklahoma Cooperative Extension Fact Sheet F–597, November 2004a.Ward, C.E. ''Captive Supply Price Relationships and Impacts.'' Oklahoma Cooperative Extension Fact Sheet F–598, November 2004b.

[5] Perry, J., J. McDonald, K. Nelson, W. Hahn, C. Arnade, and G. Plato. 2005. ''Did the Mandatory Requirement Aid the Market? Impact of the Livestock Mandatory Reporting Act.'' United States Department of Agriculture, Economic Research Service, LDP–M–135–01.

[6] Koontz, S.R. ''Impacts of Mandatory Price Reporting on the Relationship Between Fed Cattle Prices and the USDA Boxed Beef Cutout Value.'' 2007. Working Paper, Department of Agricultural and Resource Economics, Colorado State University.

[7] Lee Y., Ward, C.E. and Brorsen, B.W. 2011. ''Cash Market Importance in Price Discovery for Fed Cattles and Hogs.'' Division of Agricultural Science and Natural Resources, Oklahoma Agricultural Experiment Station, Oklahoma State University.

6. Provides information to industry participants that cannot afford to purchase data, including small pork processing operations, small wholesalers and retailers, and direct and niche marketing operations.

Summary of Costs. The regulatory objective of this proposed rule is to increase the amount of information available to participants in the marketplace for wholesale pork and pork products by mandating reporting of market information by certain members of the industry. The Committee developed the proposed rule to achieve this objective in the most cost-effective manner possible. To the extent practicable, the Committee drew upon current industry practices and reporting procedures for other commodities covered by LMR in order to minimize the burden to the industry.

The least cost reporting method to accomplish the objectives of the rule continues to be the transfer of electronic data from the reporting entity to AMS, as is the current practice with mandatory price reporting for other covered commodities. Electronic data transmission of information is accomplished using an interface with an existing electronic record keeping system. Packers will provide for the translation of the information from their existing electronic recordkeeping system into the required AMS standardized format. Once accomplished, the information will be electronically transmitted to AMS where it will be automatically loaded into an AMS database. We estimate that the creation of this interface by in-house computer personnel will require an industry average of 15 hours per respondent. Further, we estimate the cost per hour for labor to average $49.30 (Bureau of Labor Statistics),[8] for a total cost, on average, of $740. Those companies not having in-house computer personnel will incur such costs as are necessary to bring in outside computer programmers to accomplish the task.

INITIAL ELECTRONIC STARTUP COST PER RESPONDENT

Hours to develop interface	15
Labor cost per hour	× $49.30
Total cost per respondent	739.50
Startup Cost Prorated over 3 Year Life of Program: $739.50/3 = $246.50 annual cost per respondent.	

Additionally, AMS estimates the annual cost per respondent for the storage of the electronic data files which were submitted to AMS in compliance with the reporting provisions of this rule to be $116.10 (5 hours for recordkeeping at $23.22).

In this rule, information collection requirements include submission of the required information on a daily basis in the standard format provided in the Wholesale Pork Daily Report (LS–89). A copy of this report is included in Appendices at the end of this rule.There are expected to be a total of 56 respondents (34 commodity pork processors, 12 sow and boar meat processors, and 10 processors of all types of meat). Plants that slaughter both commodity pork (from barrows and gilts), and sow/boar meat will file one combined report so that the maximum number of reports per day is two.

ANNUAL SUBMISSION COSTS PER RESPONDENT

Type of product	Number of respondents	Cost per respondent	Total cost
Commodity Pork	34	$1,509.30	$51,316.20
Sow/Boar Meat	12	754.65	9,055.80
Combination Meat Types	10	1,509.30	15,093.00
	56		
Total Annual Submission Costs			75,465.00

By dividing total submission costs of $75,465.00 over the total number of respondents (56) yield an average submission cost of $1,347.59 on an annual basis. This value can be used to estimate the total cost burden to the industry, which is determined to be $95,770.64 per year.

ANNUAL INDUSTRY COSTS

	Cost per respondent	Number of respondents	Total cost to industry
Start-up Costs	$246.50	56	$13,804.00
Recordkeeping	116.10	56	6,501.60
Average Submission Costs	1,347.59	56	75,465.04
Total Annual Costs	1,710.19	56	95,770.64

In 2010, federally inspected pork production was 22.274 billion pounds. Assuming this level of production, the cost of this proposed rule to the private sector is $4.30 per million pounds ($95,770.64/22.274 billion pounds).

In addition to these costs to packers for submitting information, AMS will reallocate staff, issue regulations, and set up an electronic database to capture data and develop reports. The 3 staff years required to administer and produce mandatory price reports include reporters and auditors. Salary-related costs in each year are estimated at $271,000. Other costs include approximately $20,000 for travel/transportation, training, and outreach;

[8] *http://www.bls.gov/oes/current/oes_nat.htm#00-0000.*

$5,000 for miscellaneous costs such as printing, training, office supplies, and equipment; and $325,000 in the first year for a computer systems contract to develop the database required to manage the data.

The mandatory price reporting program would cost AMS $621,161 in the first year of implementation, and subsequent year costs are estimated to be $296,161. Therefore, the costs would be roughly $404,500 per year.

TOTAL ANNUAL COST TO GOVERNMENT

Cost type	First year costs	Following years' costs	Average cost/year
Salaries	$271,160.82	$271,160.82	$271,160.82
System Development Contract	325,000.00		108,333.33
Travel (20 trips @$1,000/trip)	20,000.00	20,000.00	20,000.00
Miscellaneous	5,000.00	5,000.00	5,000.00
Total Costs	621,160.82	296,160.82	404,494.15

Adding the costs to industry together with the costs to government, yields the total cost to society associated with this regulation. Because benefits could not be quantified, comparison of costs with benefits is not possible. However, total costs, shown annually, over the life of the rule, and discounted over the life of the rule have been calculated. These figures show that this rule does not meet the threshold for an economically significant rule ($100 million).

TOTAL COSTS OF REGULATION

Annual Costs	$500,277.52
Total Costs over 3 Years	1,500,832.56
Discounted Costs over 3 Years (3% rate)	1,457,543.39
Discounted Costs over 3 Years (7% rate)	1,404,788.36

Regulatory Flexibility Act

This proposed rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612). The purpose of the RFA is to consider the economic impact of a rule on small business entities. Alternatives, which would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace, were evaluated by the Committee. Moreover, the requirements contained in this proposed rule were negotiated with members of the industry, some of whom represented small- and mid-size firms.

Regulatory action should be appropriate to the scale of the businesses subject to the action. The collection of information is necessary for the proper performance of the functions of AMS concerning the mandatory reporting of livestock information. The 1999 Act requires AMS to collect and publish livestock market information. The required information is only available directly from those entities required to report under the 1999 Act and by these regulations and exists nowhere else. Therefore, this proposed rule does not duplicate market information reasonably accessible to USDA.

For any calendar year, any federally inspected swine plant which slaughtered an average of 100,000 head of swine a year for the immediately preceding 5 calendar years, and any packing firm that slaughtered at least 200,000 sows and/or boars on average during the preceding 5 years, are required to report information. Additionally, any swine plant that did not slaughter swine during the immediately preceding 5 calendar years is required to report if the Secretary determines that the plant should be considered a packer based on the capacity of the processing plant. This accounts for approximately 56 out of 611 swine plants or 9.2 percent of all federally inspected swine plants. Fully 90.8 percent of all swine plants in the U.S. are exempted by this rule from reporting information.

Accordingly, we also have prepared this initial regulatory flexibility analysis. The RFA compares the size of meat packing plants to the North American Industry Classification System (NAICS) to determine the percentage of small businesses within the meat packing industry. Under these size standards, meat packing companies with 500 or less employees are considered small business entities.

Objectives and Legal Basis. The objective of this rule is to improve the price and supply reporting services of AMS in order to encourage competition in the marketplace for wholesale pork products by increasing the amount of information available to participants. This is accomplished through the establishment of a program of information regarding the marketing of wholesale pork products as specifically directed by the 1999 Act, the 2010 Reauthorization Act, and these proposed regulations, as described in detail in the background section.

Estimated Number of Small Businesses. This rule provides for the mandatory reporting of market information by pork wholesalers who, for any calendar year, have slaughtered 100,000 head of swine during the immediately preceding 5 calendar years, or any packing firm that has slaughtered at least 200,000 sows and/or boars on average during the preceding 5 years. Processing plants that have not slaughtered livestock during the immediately preceding 5 calendar years are also required to report if the Secretary determines that the plants should be considered packers based on their capacity.

The NAICS size standard classifies a small business in the meat packing industry as a company with less than 500 employees. Although it is common in the red meat industry for larger companies to own several plants, some of which may employ less than 500 people, those companies with a total slaughter plant employment at all locations of less than 500 are considered to be small businesses for the purposes of this rule even though individual plants are mandated to report as provided by the 1999 Act, 2010 Reauthorization Act, and these proposed regulations.

Approximately 36 individual pork packing companies representing a total of 56 individual plants are required to report information to AMS. Based on the NAICS size standard, 24 of these 36 pork packing companies are considered small businesses, representing 27 individual plants that are required to report. The figure of 56 plants required to report represents 9.2 percent of the swine plants in the United States. The remaining 90.8 percent of swine plants, nearly all estimated to qualify as small business, are exempt from mandatory reporting.

AMS estimates the total annual burden on each swine packing entity to be, on average, $1,710.19, including $1,347.59 for annual costs associated with electronically submitting data, $246.50 for annual share of initial startup costs of $739.50, and $116.10 for the storage and maintenance of electronic files that were submitted to AMS.

Projected Recordkeeping. Each packer required to report information to the Secretary must maintain such records as are necessary to verify the accuracy of the information provided to AMS. This includes information regarding price, volume, weight, cut, and other factors necessary to adequately describe each transaction. These records are already kept by the industry. Reporting packers are required by these regulations to maintain and to make available the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, or weighing of all transactions. Reporting packers are also required to maintain copies of the information provided to AMS. All of the above-mentioned paperwork must be kept for at least 2 years. Packers are not required to report any other new or additional information that they do not generally have available or maintain. Further, they are not required to keep any information that would prove unduly burdensome to maintain. The paperwork burden that is imposed on the packers is further discussed in the section entitled ''Paperwork Reduction Act'' that follows.In addition, we have not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this rule.

Professional skills required for record keeping under this rule are not different than those already employed by the reporting entities. Reporting will be accomplished using computers or similar electronic means. AMS believes the skills needed to maintain such systems are already in place in those small businesses affected by this rule.

This proposed rule as directed by the 2010 Reauthorization Act requires pork packing plants of a certain size to report information to the Secretary at prescribed times throughout the day and week. These regulations already exempt many small businesses by the establishment of daily slaughter and processing capacity thresholds. Based on figures published by the National Agricultural Statistics Service (NASS), there were 611 swine federally inspected slaughter plants operating in the United States at the end of 2010. AMS estimates that approximately 56 swine plants are required to report information, representing 9.2 percent of all federally inspected swine plants. Therefore, fully 90.8 percent of all swine plants are not required to report.

The impact of the costs of the rule to industry was also analyzed by plant capacity, measured in terms of number of head slaughtered.Industry cost by firm size, as measured in number of head slaughtered, is shown in the following table. Firms that slaughter fewer than 100,000 per year are exempt from the rule. These data do not distinguish between barrow/gilt slaughter and sow/boar slaughter, so all firms are assumed to report on barrows/gilts.

The data show that on a per head basis, the costs of this rule range from 0.033 cents per head slaughtered for the largest firms to approximately one cent per head for the smallest plants affected by the rule. On average, the cost burden is 0.084 cents per head slaughtered.Roughly 30 plants, or 4.5 percent of all plants in the industry, have costs that exceed this value.With an average hog carcass price of $87.90 for the year to date, and an average weight of 205 pounds per carcass, the price paid per head is roughly $180. The additional cost of one cent per head, the largest expected cost for plants impacted by the rule, does not appear to represent a significant cost increase.

In the table below, showing data for 2010, 91.2 percent of all plants (or 557 of 611 plants) would not have been expected to incur any reporting costs. All the costs would have been borne by the largest 8.8 percent of plants. Because the data in this table do not differentiate between sow/boar and barrow & gilt plants, these figures are approximates of the actual values, but are illustrative of the expected distributional impacts of the rule.

HOGS, NUMBER OF FEDERALLY INSPECTED PLANTS, HEAD SLAUGHTERED, TOTAL COST, AND COST/HEAD BY SIZE GROUP UNITED STATES: 2010 *

Number head	Number of plants	Thousand head	Total cost	Cost/head
1–999	385	117.6	$0.00	$0.00000
1,000–9,999	116	328.4	0.00	0.00000
10,000–99,999	56	2,163.0	0.00	0.00000
100,000–249,999	14	2,235.8	23,942.66	0.01071
250,000–499,999	8	2,799.8	13,681.52	0.00489
500,000–999,999	5	3,346.7	8,550.95	0.00255
1,000,000–1,999,999	3	4,850.5	5,130.57	0.00106
2,000,000–2,999,999	11	26,862.7	18,812.09	0.00070
3,000,000–3,999,999	1	3,862.4	1,710.19	0.00044
4,000,000+	12	62,747.8	20,522.28	0.00033
Total	611	109,314.7	92,340.26	0.00084

* Source: U.S. Department of Agriculture, National Agricultural Statistics Service, ''Livestock Slaughter: 2010 Annual Summary,'' April 2011.

In summary, the RFA analysis showed that of the 56 firms facilities that are required to report, 27 (just under half) qualify as being owned by small businesses. These 27 facilities are owned by 24 of the 36 companies subject to the rule. However, given the capital intensive nature of the industry, a more appropriate approach to the RFA analysis may be the number of head slaughtered by company. This approach was recognized by Congress in the original LMR legislation, by placing a 100,000 head minimum slaughter requirement on firms which report. Using that standard, fewer than 10 percent of all firms in the industry are affected by this regulation. In addition, the increased cost of the rule represents at most roughly 0.006 percent the current hog carcass value ($0.01/$180.00). Based on this analysis, AMS determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with 5 CFR part 1320, we include the description of the reporting and recordkeeping requirements and an estimate of the annual burden on packers required to report information under this proposed rule. If the proposed rule is finalized, it is the intent of AMS to submit to OMB a request to merge this collection into the currently approved collection, ''Livestock Mandatory Reporting Act of 1999'', OMB number 0581–0186.

The information collection and recordkeeping requirements in this regulation are essential to establishing and implementing a mandatory program of livestock and livestock products reporting. Based on the information available, AMS estimates that there are 34 commodity pork packer plants, 12 sow/boar meat packer plants, and 10 packer plants processing both commodity pork and sow/boar meat that are required to report market information under this rule. These companies have similar record keeping systems and business operation practices and conduct their operations in a similar manner. The Committee believes that all of the information required under this proposed rule can be collected from existing materials and systems and that these materials and systems can be adapted to satisfy the new requirements.

The PRA also requires AMS to measure the recordkeeping burden. Under this proposed rule, each packer required to report must maintain and make available upon request for 2 years, such records as are necessary to verify the accuracy of the information required to be reported. These records include original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock. Under this proposed rule, the electronic data files which the packers are required to utilize when submitting information to AMS will have to be maintained as these files provide the best record of compliance. Therefore, the recordkeeping burden includes the amount of time needed to store and maintain records. AMS estimates that, since records of original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, and weighing of wholesale pork products are stored and maintained as a matter of normal business practice by these companies for a period in excess of 2 years, additional annual costs will nominal. AMS estimates the annual cost per respondent for the storage of the electronic data files which were submitted to AMS in compliance with the reporting provisions of this rule to be $116.10. This estimate includes the cost per respondent to maintain such records which is estimated to average 5 hours per year at $23.22 per hour.

In this proposed rule, information collection requirements have been designed to minimize disruption to the normal business practices of the affected entities. The requirements include the submission of the required information on a daily basis in the standard format provided in the form included in the Appendices section. This form requires the minimal amount of information necessary to properly describe each reportable transaction, as required under this proposed rule.

1. Wholesale Pork Daily Report: Form LS–89

Estimate of Burden: Public reporting burden for collection of information is estimated to be 0.125 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on wholesale pork sales to the Secretary.

Estimated Number of Respondents: 34 commodity pork plants, 12 sow/boar meat plants and 10 combination commodity pork/sow/boar meat plants.

Estimated Number of Responses per Respondent: 520 per year for commodity pork (2 per day for 260 days); 260 per year for sow/boar meat (1 per day for 260 days); and 520 per year (2 per day) for combination commodity pork/sow/boar meat.

Estimated Total Annual Burden on Respondents: 3,250 hours. With 260 reporting days per year, commodity pork processors, and processors which produce a combination of commodity pork/sow/boar meat, will submit a total of 520 responses per year, and sow/boar meat processors will submit a total of 260 responses per year. This includes 5 hours for recordkeeping, annually, for each of the 56 respondents (total recordkeeping hours of 280).

BREAKDOWN OF ESTIMATED DATA SUBMISSION COST BURDEN

Item	Reporting days		Responses		Total responses
I. Number of Responses per Respondent per Year					
Commodity Pork/Combination	260	×	2 daily	=	520
Sow/Boar Meat	260	×	1 daily	=	260

At 0.125 hours per submission, commodity pork/combination processors will require 65.0 hours of reporting time, while sow/boar meat processors will require 32.5 hours of reporting time.

Item	Submissions/ year		Hours/ submission		Total hours/year
II. Number of Submission Hours per Respondent per Year					
Commodity Pork/Combination	520	×	.125	=	65.00
Sow/Boar Meat	260	×	.125	=	32.50

Total annual submission costs for commodity pork and combination pork processors is expected to be $1,509.30 with a clerical cost of $23.22 per hour, including benefits. Annual costs for sow meat processors will equal $754.65.

Item	Total Hours/ year		Cost/hour		Total $'s/ year
III. Total Submission Cost per Respondent per Year					
Commodity Pork/Combination	65.00	×	$23.22	=	$1,509.30
Sow/Boar Meat	32.50	×	23.22	=	754.65

A total of 44 respondents are expected to report commodity pork/combination wholesale data, while 12 sow/boar meat respondents are anticipated. Ten of the respondents will report on both types of product. In all, 56 different respondents will be reporting, incurring total annual submission costs of about $75,465.00.

Item	Total $'s/ year		# of Respondents		Total Cost
IV. Total Yearly Submission Cost for all Respondents					
Commodity Pork/Combination	$1,509.30	×	44	=	$66,409.20
Sow/Boar Meat	754.65	×	12	=	9,055.80
Total					75,465.00

Estimated Total Annual Burden on Respondents: $95,770.64 including $75,465.00 for annual costs associated with electronically submitted responses (3,250 annual hours (58.036 annual hours per 56 respondents) @ $23.22 per hour, for a total of $1,347.59 per respondent), initial electronic data transfer setup costs of $13,804.00 ($739.50 prorated over 3 years = $246.50 per 56 respondents), and $6,501.60 ($116.10 per 56 respondents) for the storage and maintenance of electronic files that were submitted to AMS.

A 60-day comment period is also provided for interested persons to comment on the regulatory provisions of this proposed rule. AMS is also inviting comments concerning the information collection and recordkeeping requirements contained in this proposed rule. Comments are specifically invited on: (1) The accuracy of the burden estimate of the proposed collection of information including the validity of the methodology and the assumptions used; (2) ways to minimize the burden of the collection of information on those who would be required to respond, including through the use of appropriate electronic collection methods; (3) whether the proposed collection of information was sufficient or necessary for the proper performance of the functions of the agency as mandated by the 1999 Act and the Reauthorization Act; and (4) ways to enhance the quality, utility, and clarity of the information to be collected. All comments should be submitted at: *http://www.regulations.gov,* or may be sent to Michael Lynch, Director, Livestock and Grain Market News Division, 1400 Independence Ave. SW., Room 2619–S, Washington, DC 20250–0252, or by fax to (202) 690–3732.

Comments that specifically pertain to the information collection and recordkeeping requirements of this action should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Room 725, Washington, DC 20503, and should reference the date and page number of this issue of the **Federal Register**. All responses to this proposed rule will be summarized and included in the request for OMB approval, and will become a matter of public record. The comment period for the information collection and recordkeeping requirements contained in this proposed rule is also 60 days.

List of Subjects in 7 CFR Part 59

Cattle, Hogs, Sheep, Livestock, Lamb.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter I of the Code of Federal Regulations is amended by revising part 59 to read as follows:

PART 59—LIVESTOCK MANDATORY REPORTING

1. The authority citation for part 59 continues to read as follows:

Authority: 7 U.S.C. 1635–1636i.

2. Section 59.20 is amended by adding paragraph (f) to read as follows:

§ 59.20 [Amended]

* * * * *

(f) Reporting Sales of Wholesale Pork. A record of a sale of wholesale pork by a packer shall evidence whether the sale occurred:

(1) Before 10 a.m. central time;

(2) Between 10 a.m. and 2 p.m. central time; or

(3) After 2 p.m. central time.

§ 59.30 [Amended]

3. Section 59.30 is amended by:

A. Revising the definition of ''F.O.B.'' to read as follows:

F.O.B. The term ''F.O.B.'' means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer (e.g., F.O.B. Plant, F.O.B. Feedlot) or from a common basis point to the buyer (e.g., F.O.B. Omaha).

B. Revising the last two sentences in the definition of ''Institutional Meat Purchase Specifications'' to reflect an updated phone number and Web address.

* * * Phone (202) 260–8295 or Fax (202) 720–1112. Copies may also be obtained over the Internet at *http://www.ams.usda.gov/AMSv1.0/LivestockStandardizationIMPS.*

C. Revising the definition of ''Lot'' to read as follows:

* * * * *

(3) When used in reference to boxed beef, wholesale pork, and lamb, the term 'lot' means a group of one or more boxes of beef, wholesale pork, or lamb items sharing cutting and trimming specifications and comprising a single transaction between a buyer and seller.

§ 59.200 [Amended]

4. Section 59.200 is amended by:

A. Adding, in alphabetical order, a definition for ''Formula marketing arrangement'':

Formula marketing arrangement. When used in reference to wholesale pork, the term 'formula marketing arrangement' means an agreement for the sale of pork executed in advanceof manufacture under which the price is established in reference to publicly-available quoted prices.

B. Adding, in alphabetical order, a definition for ''Forward sale'':

Forward sale. When used in reference to wholesale pork, the term 'forward sale' means an agreement for the sale of pork where the delivery is beyond the timeframe of a ''negotiated sale'' and means a sale by a packer selling wholesale pork to a buyer of wholesale pork under which the price is determined by seller-buyer interaction and agreement.

C. Adding, in alphabetical order, a definition for ''Negotiated sale'':

Negotiated sale. The term 'negotiated sale' means a sale by a packer selling wholesale pork to a buyer of wholesale pork under which the price is determined by seller-buyer interaction and agreement, and scheduled for delivery not later than 14 days for boxed product and 10 days for combo product after the date of agreement. The day after the seller-buyer agreement shall be considered day one for reporting delivery periods.

D. Adding, in alphabetical order, a definition for ''Pork class'':

Pork class. The term ''pork class'' means the following types of swine purchased for slaughter: (1) Barrow/gilt; (2) sow; (3) boar.

E. Adding, in alphabetical order, a definition for ''Specialty pork products'':

Specialty pork product. The term 'specialty pork product' means wholesale pork produced and marketed under any specialty program such as genetically-selected pork, certified programs, or specialty selection programs for quality or breed characteristics.

F. Adding, in alphabetical order, a definition for ''Type of sale'':

Type of sale. The term ''type of sale'' with respect to wholesale pork means a negotiated sale, forward sale, or formula marketing arrangement.

G. Adding, in alphabetical order, a definition for ''Variety meats'':

Variety meats. The term 'variety meats' with respect to wholesale pork means cut/processing floor items, such as neck bones, tails, skins, feet, hocks, jowls, and backfat.

H. Adding, in alphabetical order, a definition for ''Wholesale pork'':

Wholesale pork. The term ''wholesale pork'' means fresh and frozen primals, sub-primals, cuts fabricated from sub-primals, pork trimmings, pork for processing, and variety meats (excluding portion-control cuts, cuts flavored above and beyond normal added ingredients that are used to enhance products, cured, smoked, cooked, and tray packed products). When referring to wholesale pork, added ingredients are used to enhance the product's performance (e.g. tenderness, juiciness) through adding a solution or emulsion via an injection or immersion process. The ingredients shall be limited to water, salt, sodium phosphate, antimicrobials, or any other similar combination of foresaid or similar ingredients and in accordance with established USDA regulations.

I. Adding a new section 59.205 that reads as follows:

§ 59.205 Mandatory reporting of wholesale pork sales.

(a) *Daily Reporting.* The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary at least twice each reporting day for barrows and gilts (once by 10 a.m. central time, and once by 2 p.m. central time) and once each reporting day for sows and boars (by 2 p.m. central time) the following information on total pork sales established on that day inclusive since the last reporting as described in § 59.10 (b):

(1) The price for each wholesale pork sale, as defined herein, quoted in dollars per hundredweight on an F.O.B. Plant and an F.O.B. Omaha basis as outlined in § 59.205 (d). The price shall include brokerage fees, if applicable. All direct, specific, and identifiable marketing costs (such as point of purchase material, marketing funds, accruals, rebates, and export costs) shall be deducted from the net price if applicable and known at the time of sale;

(2) The quantity for each pork sale, quoted by number of pounds sold; and

(3) The information regarding the characteristics of each sale is as follows:

(i) The type of sale;

(ii) Pork item description;

(iii) Pork item product code;

(iv) The product delivery period, in calendar days;

(v) The pork class (barrow/gilt, sow, boar);

(vi) Destination (Domestic, Export/Overseas, NAFTA);

(vii) Type of Refrigeration (Fresh, Frozen, age range of fresh product); and

(viii) Specialty pork product, if applicable

(b) *Publication.* The Secretary shall make available to the public the information obtained under paragraph (a) of this section not less frequently than twice each reporting day for gilt and barrow product and once each reporting day for sow and boar product.

(c) The Secretary shall obtain product specifications upon request.

(d) The Secretary shall provide freight information for the purpose of calculating prices on an F.O.B. Omaha basis. The Secretary shall provide this information periodically, but not less than quarterly.

Dated: March 15, 2012.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

Note: The following Appendices will not appear in the Code of Federal Regulations.

Appendix A to Subpart C—Swine Mandatory Reporting Form

The following form referenced in Subpart C of part 59 would be used by persons required to report electronically transmitted mandatory market information on domestic sales of boxed beef to AMS.

Swine

LS–89—Wholesale Pork Daily Report

Appendix B to Subpart C—Mandatory Reporting Guideline

The following mandatory reporting form guidelines will be used by persons required to report electronically transmitted mandatory market information to AMS.

The first 10 fields of each mandatory reporting form provide the following information: identification number (plant establishment number ID number), company name (name of parent company), plant street address (street address for plant), plant city (city where plant is located), plant state (state where plant is located), plant zip code (zip code where plant is located), contact name (the name of the corporate representative contact at the plant), phone number (full phone number for the plant including area code), reporting date (date the information was submitted (mm/dd/yyyy),and reporting time (the submission time corresponding to the 10 a.m. and the 2 p.m. reporting requirements).

(a) Wholesale Pork Mandatory Reporting Forms

(1) LS–89—Wholesale Pork Daily Report. For lots comprising multiple items, provide information for each item in a separate record identified with the same lot identification or purchase order number.

(i) Lot identification or purchase order number (11). Enter code used to identify the lot to the packer.

(ii) Destination (12). Enter '1', domestic, for product shipped within the 50 States; '2', exported, for product shipped outside of the 50 States; and '3', exported, for product shipped NAFTA (Canada or Mexico).

(iii) Sales type code (13). Enter the code corresponding to the sale type of the lot of wholesale pork.

(iv) Delivery period code (14). Enter the code corresponding to the delivery time period of the lot of wholesale pork.

(v) Refrigeration (15). Enter '1' if the product is sold in 0–6 days fresh, combo; '2' if the product is sold 7 or more days fresh, combo; '3' if the product is sold 0–10 days fresh, boxed; '4' if the product is sold 11 or more days fresh, boxed; and '5' if the product is sold in a frozen condition.

(vi) Class code (16). Enter '1' if the product was derived from barrows/gilts, '2' for sows, '3' for boar, and '4' for mixed.

(vii) Pork item product code (17). Enter the company product code for item sold.

(viii) Pork item—Description (18). Enter the pork item name.

(ix) Total product weight (19). Enter the total weight of the wholesale pork cuts in the lot in pounds.

(xii) F.O.B. Plant Price (20). Enter the price received for each wholesale pork cut in the lot in dollars per one hundred pounds, FOB Plant basis.

(xiii) F.O.B. Omaha Price (21). Enter the price received for each wholesale pork cut in the lot in dollars per one hundred pounds, FOB Omaha basis.

BILLING CODE 3410–02–P

FORMAPPROVED. -OMBNO.0581-0186

UNITED STATESDEPARTMENT OFAGRICULTURE
AGRICULTURAL MARKETINGSERVICE

WHOLESALE PORK DAILY REPORT

1.IDENTIFICATIONNUMBER	
2.COMPANY NAME	
3.PLANT STREETADDRESS	
4.PLANT CITY	
5.PLANT STATE	
6.PLANT ZIPCODE	
7.CONTACT NAME	
8.PHONE NUMBER (include area code)	
9.REPORTINGDATE(mm/dd/yyyy)	
10.REPORTINGTIME(1 =10:00 a.m.;2 =2:00 p.m.)	
11.LOTIDENTIFICATION	
12. DESTINATION(1 =Domestic;2 =Export/Overseas;3 = NAFTA)	
13.SALES TYPECODE	
14.DELIVERY PERIODCODE	
15.REFRIGERATION	
16.CLASS CODE	

DELIVERYPERIODCODE
1 = 0-14 DAYS BOX
2 =15-60 DAYS BOX
3 =61 DAYS/UP BOX
4 =0-10 DAYS COMBO
5 =11-60 DAYS COMBO
6 =61 DAYS/UP COMBO

CLASS CODE
1 =BARROW/GILTS
2 =SOW
3 =BOAR
4 =MIXEDBAR/GLT/SOW/BOAR

REFRIGERATIONCODE
1 =0-6 FRESH,COMBO
2 =7+ FRESH,COMBO
3 =0-10 FRESH,BOXED
4 =11+ FRESH,BOXED
5 =FROZEN

SALESTYPECODE
1 =NEGOTIATEDSALE
2 =FORWARD SALE
3 =FORMULA MARKETING ARRANGEMENT

NOTE: AccordingtothePaperworkReductionActof1995,anagencymaynotconductorsponsor, andapersonisnotrequiredto respondto acollectionof informationunlessitdisplaysavalidOMB controlnumber. ThevalidOMB controlnumberforthisinformationcollectionis0581-0186. Thetime requiredto completethisinformationcollectionisestimatedto average10minutesperresponse, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection ofinformation.

TheU.S.Departmentof Agriculture(USDA)prohibitsdiscriminationinallitsprogramsandactivitieson thebasisofrace,color,nationalorigin,age,disability,andwhereapplicable,sex,maritalstatus, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal,orbecauseallorpartof anindividual'sincomeisderivedfromanypublicassistanceprogram (Notallprohibitedbasesapplytoallprograms.)Personswithdisabilitieswhorequirealternative meansforcommunicationofprograminformation(Braille,largeprint,audiotape,etc.) shouldcontact USDA'sTARGET Centerat(202)720-2600(voiceandTDD). Tofileacomplaintofdiscrimination, writetoUSDA,Director,Office ofCivilRights,1400IndependenceAvenue,S.W.,Washington,D. C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

17. PORKITEMPRODUCT CODE	
18.PORKITEM- Description	
19.TOTALPRODUCT WEIGHT	
20.FOBPLANT PRICE ($/CWT)	
21.FOBOMAHAPRICE ($	

LS-89

[FR Doc. 2012–6992 Filed 3–22–12; 8:45 am]
BILLING CODE 3410–02–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0079; Directorate Identifier 2012–NE–06–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Pratt & Whitney PW4052, PW4152, PW4056, PW4156A, PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4158, PW4460, PW4462, PW4164, PW4164C, PW4164C/B, PW4168, and PW4168A turbofan engines with certain high-pressure turbine (HPT) stage 1 front hubs installed. This proposed AD was prompted by Pratt & Whitney's updated low-cycle-fatigue analysis that indicated certain HPT stage 1 front hubs could initiate a crack prior to the published life limit. This proposed AD would require removing the affected HPT stage 1 front hubs from service using a drawdown plan. We are proposing this AD to prevent failure of the HPT stage 1 front hub, which could lead to an uncontained engine failure and damage to the airplane.

DATES: We must receive comments on this proposed AD by May 22, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–7700; fax: 860–565–1605. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: James Gray, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA; phone: 781–238–7742; fax: 781–238–7199; email: *james.e.gray@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0079; Directorate Identifier 2012–NE–06–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

A PW2000 field event led Pratt & Whitney to re-evaluate the low-cycle fatigue analysis of the PW2000 engine and similar engine models, including the PW4000 engine. Pratt & Whitney's updated analysis indicated that the original grain size requirement specified on the HPT stage 1 front hub design drawing was too large, and may not be sufficient to meet the published life limits. Although we have not received any reports of cracks, parts with the larger grain size may initiate a crack prior to the published life limits. This condition, if not corrected, could result in failure of the HPT stage 1 front hub, which could lead to an uncontained engine failure and damage to the airplane.

Relevant Service Information

We reviewed Pratt & Whitney Service Bulletin (SB) No. PW4ENG 72–795, Revision 2, dated April 5, 2011, and SB No. PW4G–100–72–220, Revision 4, dated September 30, 2011. The SBs list the serial numbers of HPT stage 1 front hubs with part number (P/N) 51L901 that are NOT affected by this AD. However, all serial numbers of HPT stage 1 front hubs with P/N 51L201, P/N 51L201–001, P/N 51L601, and P/N 52L401 are affected.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require removing the affected HPT stage 1 front hubs from service using a drawdown plan.

Costs of Compliance

We estimate that this proposed AD would affect 954 engines installed on airplanes of U.S. registry. About 605 engines use a 20,000 cycles-since new (CSN) life limit for the HPT stage 1 front hub. For these engines, we estimate the lost part life to have a value of about $25,400 per engine. About 349 engines use a 15,000 CSN life limit. For these engines, we estimate the lost life to have a value of about $22,013 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators is $23,049,537.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority