

# Proposed Rules

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. AMS-LPS-15-0070]

RIN 0581-AD45

### Livestock Mandatory Reporting: Reauthorization of Livestock Mandatory Reporting and Revision of Swine and Lamb Reporting Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** On April 2, 2001, the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) implemented the Livestock Mandatory Reporting (LMR) program as required by the Livestock Mandatory Reporting Act of 1999 (1999 Act). The LMR program was reauthorized in October 2006 and September 2010. On September 30, 2015, the Agriculture Reauthorizations Act of 2015 (2015 Reauthorization Act) reauthorized the LMR program for an additional 5 years until September 30, 2020, and directed the Secretary of Agriculture (Secretary) to amend the LMR swine reporting requirements. In addition, the lamb industry requested revisions to the lamb reporting requirements as authorized through the 1999 Act. This proposed rule would incorporate the requested lamb reporting revisions, and would incorporate the swine reporting revisions contained within the 2015 Reauthorization Act under the Agricultural Marketing Act of 1946, USDA Livestock Mandatory Reporting regulations.

**DATES:** Comments must be received by April 29, 2016. Pursuant to the Paperwork Reduction Act (PRA), comments on the information collection burden that would result from this rule must be received by April 29, 2016.

**ADDRESSES:** Comments should be submitted electronically at <http://www.regulations.gov>.

[www.regulations.gov](http://www.regulations.gov). Comments may also be sent to Michael Lynch, Director, Livestock, Poultry, and Grain Market News Division; Livestock, Poultry, and Seed Program; AMS, USDA, Room 2619-S, STOP 0252; 1400 Independence Avenue SW., Washington, DC 20250-0251; telephone (202) 720-4868; fax (202) 690-3732; or email to [Michael.Lynch@ams.usda.gov](mailto:Michael.Lynch@ams.usda.gov).

Comments should reference docket number AMS-LPS-15-0070 and 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. 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; Livestock, Poultry, and Grain Market News Division; Livestock, Poultry, and Seed Program; AMS, USDA, Room 2619-S, STOP 0252; 1400 Independence Avenue SW., Washington, DC 20250-0251; Telephone (202) 720-4868; Fax (202) 690-3732; or email to [Michael.Lynch@ams.usda.gov](mailto:Michael.Lynch@ams.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The 1999 Act was enacted into law on October 22, 1999, [Pub. L. 106-78; 113 Stat. 1188; 7 U.S.C. 1635-1636(i)] as an amendment to the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). On April 2, 2001, the AMS Livestock, Poultry, and Seed Program's (LPS) Livestock, Poultry, and Grain Market News Division (LPGMN) implemented the LMR program as required by the 1999 Act. The purpose was to establish a program of easily understood information regarding the marketing of cattle, swine, lambs, and livestock products; improve the price and supply reporting services of the USDA; and encourage competition in

## Federal Register

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the marketplace for livestock and livestock products. The LMR regulations (7 CFR part 59) set the requirements for packers or importers to submit purchase and sales information of livestock and livestock products to meet this purpose.

The statutory authority for the program lapsed on September 30, 2005. In October 2006, Congress passed the Livestock Mandatory Reporting Reauthorization Act (2006 Reauthorization Act) [Pub. L. 109-296]. The 2006 Reauthorization Act re-established the regulatory authority for the continued operation of LMR through September 30, 2010. On July 15, 2008, the LMR final rule became effective (73 FR 28606, May 16, 2008).

On September 28, 2010, Congress passed the Mandatory Price Reporting Act of 2010 (2010 Reauthorization Act) [Pub. L. 111-239]. The 2010 Reauthorization Act reauthorized LMR for an additional 5 years through September 30, 2015. On January 7, 2013, the LMR final rule became effective (77 FR 50561, August 22, 2012).

On September 30, 2015, the Agriculture Reauthorizations Act of 2015 (2015 Reauthorization Act) [Pub. L. 114-54] was enacted which reauthorized the LMR program for an additional 5 years through September 30, 2020, and amended the reporting requirements for reporting of swine purchase types and late afternoon swine purchases. In addition, at the request of the lamb industry, this proposed rule includes amended definitions for packer owned lambs and lambs committed for delivery, and a provision for adding lamb pelts as a reporting requirement.

This proposed rule would incorporate the swine reporting revisions contained within the 2015 Reauthorization Act and the lamb reporting revisions as proposed by the lamb industry, under the USDA LMR regulations.

##### II. Proposed Revisions

Under the LMR regulations, certain cattle, swine and lamb packers and processors, and lamb importers are required to report purchases of livestock for slaughter and sales of meat products to AMS. This proposed rule would amend the LMR regulations for swine reporting and lamb reporting requirements as described below.

##### Swine

The swine reporting requirement revisions within this proposed rule are

authorized through the 2015 Reauthorization Act. This proposed rule would minimally increase the reporting burden for swine packers.

Currently, swine packers are required to report purchase data by four types of purchase: Negotiated purchase, other market formula purchase, swine or pork market formula purchase, or other purchase arrangement. A negotiated purchase is a cash or spot market purchase by a packer under which the base price for the swine is determined by seller-buyer interaction and agreement on a delivery day; and the swine are scheduled for delivery to the packer not more than 14 days after the date on which the swine are committed to the packer. Other market formula purchase is a purchase of swine by a packer in which the pricing mechanism is a formula price based on any market other than the market for swine, pork, or a pork product; and includes a formula purchase in a case where the price formula is based on one or more futures or options contracts. A swine or pork market formula purchase is a purchase of swine by a packer in which the pricing mechanism is a formula price based on a market for swine, pork, or a pork product, other than a future or option for swine, pork, or pork product. Other purchase arrangement is a purchase of swine by a packer that is not a negotiated purchase, swine or pork market formula purchase, or other market formula purchase; and does not involve packer-owned swine.

The 2015 Reauthorization Act amended the swine reporting requirements, subpart C of part 59, by adding an additional purchase type definition for negotiated formula purchases of swine, which requires swine packers to report swine purchased on a negotiated formula basis as a separate purchase type. As defined in § 59.200, the term “negotiated formula” is a swine or pork market formula purchase under which the formula is determined by negotiation on a lot-by-lot basis, and swine are scheduled for delivery to the packer not later than 14 days after the date on which the formula is negotiated and swine are committed to the packer. Packers would be required to report any swine purchased in this manner as a negotiated formula purchase.

Adding a negotiated formula purchase type would provide market participants with more specific information about the various purchase methods used in the daily marketing of swine and a better understanding of the marketplace concerning formulated prices and spot negotiated prices.

Currently, packers are required to report purchase data for barrows and gilts for a morning report not later than 10 a.m. central time, and an afternoon report not later than 2 p.m. central time. The information to be reported is the same for the morning and afternoon reports and includes an estimate of the total number of barrows and gilts purchased by each type of purchase, the total number of barrows and gilts purchased, and the base price paid for all negotiated purchases of barrows and gilts and the base price paid for each type of purchase of barrows and gilts other than through a negotiated purchase. This information must be submitted for all covered transactions made up to within one half hour of each specified reporting time. Packers completing transactions during the half hour prior to the previous reporting time report those transactions at the next prescribed reporting time.

The 2015 Reauthorization Act directed the Secretary to include in the morning and afternoon daily reports for the following day, the purchase information for any barrows and gilts purchased or priced after the afternoon reporting time of the current reporting day. Under this proposed rule, the required information to be reported would remain the same for the morning and afternoon reports; however, the LMR regulations for the morning report requirements under § 59.202 would be amended to require packers to report purchase data for barrows and gilts purchased after 1:30 p.m. central time of the previous reporting day and up to that time of the reporting day for the total number of barrows and gilts purchased, and the base price paid for all negotiated purchases of barrows and gilts and the base price paid for each type of purchase of barrows and gilts other than through a negotiated purchase. Under this proposed rule, the LMR regulations for the afternoon reporting requirements would remain unchanged. The inclusion of the late in the day swine purchase information in the following day's reports would increase the volume of barrows and gilts shown in the daily morning and afternoon purchase reports and better represent the daily market conditions.

#### *Lamb*

Since the implementation of LMR in 2001 and its subsequent revisions, the U.S. lamb industry has become more concentrated at all levels of the production system through consolidation, impacting AMS' ability to publish certain market information in accordance with the confidentiality provisions of the 1999 Act. To help

address this issue, the Livestock Marketing Information Center, an independent provider of economic analyses concerning the livestock industry, conducted an analysis of the current LMR program for lamb reporting in 2013 at the request of the American Sheep Industry Association, an industry organization representing sheep producers throughout the U.S.<sup>1</sup> Based on this study, recommendations were proposed to amend the current LMR regulations to improve the price and supply reporting services of AMS and better align LMR lamb reporting requirements with current industry marketing practices. These recommendations are the basis for the lamb reporting changes as proposed by the lamb industry for this proposed rule.

Proposed revisions to the lamb reporting requirements, subpart D of part 59, include an amended definition under § 59.300 for the term “packer-owned lambs.” Currently, the term “packer-owned lambs” includes lambs owned by a packer for at least 14 days immediately before slaughter. The amended definition would cover those lambs that are owned by a packer for at least 28 days immediately before slaughter. Proposed revisions to the lamb reporting requirements also include a new definition under § 59.300 for the term “lambs committed” and require packers under § 59.302 to report quantity and delivery period for all lambs committed to be delivered to the packer. The term “lambs committed” means lambs intended to be delivered to a packer beginning on the date of an agreement to sell the lambs. In 2008 (73 FR 28606, May 16, 2008), a different definition for the term “lambs committed” was deleted in the LMR regulations at the request of the lamb industry because it was not applicable at the time. However, since that time, lamb industry supply and demand related issues underscored the need for market participants to be more informed of specific types of lamb market data not available through other USDA agencies. Therefore, packers would report “lambs committed” and “packer-owned lambs” under the updated definitions in this proposed rule to meet this industry request and improve transparency in the marketplace. These revisions would minimally increase the reporting burden for lamb packers.

<sup>1</sup> Hearing to Review Reauthorization of the Livestock Mandatory Reporting Act: Hearing before the Subcommittee on Livestock and Foreign Agriculture of the Committee on Agriculture, House of Representatives, 114th Cong., 1st sess. (Serial No. 114-12). (2015). Retrieved from GPO's Federal Digital System: <https://www.gpo.gov/fdsys/pkg/CHRG-114hrg94372/pdf/CHRG-114hrg94372.pdf>.

Under this proposed rule, lamb reporting requirements would also be amended to require packers under § 59.302 to report price, volume, and classification descriptors for all lamb pelts from lambs purchased on a negotiated purchase, formula marketing arrangement, or forward contract basis. As would be defined under this proposed rule in § 59.300, the term “pelt” means the skin and attached wool from a sheep or lamb carcass. In recent years, consolidation within the lamb packing and pelt processing industries has presented increased challenges for AMS in reporting consistent weekly market information on a voluntary basis for pelts marketed from the lamb packers to the pelt processors. Under this proposed rule, packers would be required to report weekly prices and volumes paid to the producer for each specific classification category of pelts in a given lot. This requirement would provide lamb producers more accurate information on the total value of lambs marketed for slaughter while minimally increasing the reporting burden for lamb packers.

#### Appendices

The final section of this document contains four appendices. These appendices will not appear in the Code of Federal Regulations. Appendices A and B list the forms that would be used by swine and lamb packers required to report information under the LMR program. Appendix C provides a description of the forms, while appendix D contains the actual reporting forms. Amendments to two swine reporting forms, LS-118 Swine Prior Day Report and LS-119 Swine Daily Report, were made to include the new purchase type proposed under this rule, “negotiated formula purchase.” Only one form for swine reporting, LS-119 Swine Daily Report, requires an amendment to the description of the form to include the reporting of the late afternoon purchased barrows and gilts from the previous reporting day in the following reporting day’s daily reports, as contained in appendix C. Amendments to one lamb reporting form, LS-123 Lamb Weekly Report, were made to include the volume and delivery period information needed for reporting lambs committed for delivery. In addition, a new form, LS-133 Lamb Pelts Weekly Report, was created to facilitate the reporting of information on lamb pelts.

### III. Classification

#### *Executive Order 12866 and Executive Order 13563*

This proposed rule is being issued by USDA with regard to the LMR program in conformance with Executive Orders 12866 and 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 action has been designated as a “non-significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process for this action.

#### *Regulatory Flexibility Act*

*In General.* This proposed rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612). The purpose of 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, have been evaluated. 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. Information is only available directly from those entities required to report under these regulations and exists nowhere else. Therefore, this proposed rule does not duplicate market information reasonably accessible to the USDA.

*Objectives and Legal Basis.* The objective of this proposed rule is to improve the price and supply reporting services of the USDA in order to encourage competition in the marketplace for swine and lambs as specifically directed by the 2015 Reauthorization Act and the lamb industry requested revisions as authorized through the 1999 Act and these regulations, as described in detail in the background section.

#### *Estimated Number of Small Businesses.*

For this regulatory flexibility analysis, AMS utilized the North American Industry Classification System (NAICS), which is the standard used by federal statistical agencies to classify business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. This analysis compares the size of meat packing companies to the NAICS standards to determine the percentage of small businesses within the industry affected by this proposed rule. Under these size standards, meat packing companies with 500 or less employees are considered small business entities.<sup>2</sup>

This proposed rule would amend the reporting requirements for swine packers by adding a new purchase type for negotiated formula purchases of barrows and gilts, and including late afternoon purchases of barrows and gilts from the previous reporting day in the morning and afternoon daily reports of the current reporting day. For swine packers, this proposed rule would apply only to 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 would 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.

Approximately 36 individual pork packing companies representing a total of 55 individual plants are required to report information to AMS. Based on the NAICS size standard for meat packing companies with 500 or less employees, AMS estimates that 24 of these 36 pork packing companies would be considered small businesses, representing 27 individual plants that are required to report. The figure of 55 plants required to report represents 8.9 percent of the federally inspected swine plants in the United States. The remaining 91.1 percent of swine plants, nearly all estimated to qualify as small business, are exempt from mandatory reporting.

To implement the swine reporting changes in this proposed rule, AMS

<sup>2</sup> North American Industry Classification System, code 311611 for abattoirs.

estimated the total annual burden on each swine packer to be \$108 which includes the annual share of initial startup costs of \$415. There is no annual cost increase associated with electronically submitting data or for the storage and maintenance of electronic files submitted to AMS due to the changes in this proposed rule.

For lamb reporting, this proposed rule would require packers to report quantity and delivery period for all lambs committed to be delivered to the packer beginning on the date of an agreement to sell the lambs. In addition, lamb packers would be required to report price, volume, and classification descriptors for all lamb pelts from lambs purchased from producers. Under the 2015 Reauthorization Act, a lamb packer includes any person with 50 percent or more ownership in a facility that slaughtered or processed an average of 35,000 lambs during the immediately preceding 5 calendar years, or that did not slaughter or process an average of 35,000 lambs during the immediately preceding 5 calendar years if the Secretary determines that the processing plant should be considered a packer after considering its capacity.

The LMR regulations require 10 lamb packers to report information, which is less than 2 percent of all federally inspected lamb plants. Therefore, approximately 98 percent of lamb packers are exempt from reporting information by this proposed rule. Based on the NAICS size standard for meat packing companies with 500 or less employees and its knowledge of the lamb industry, AMS estimates that all lamb packing companies currently required to report under LMR would be considered small businesses. To implement the lamb reporting changes in this proposed rule, AMS estimated the total annual burden on each lamb packer to be \$216 which includes the annual share of initial startup costs of \$830. There is no annual cost increase associated with electronically submitting data, or for the storage and maintenance of electronic files submitted to AMS due to the changes in this proposed rule.

*Projected Reporting.* The LMR regulations require the reporting of specific market information regarding the buying and selling of livestock and livestock products. This information is reported to AMS by electronic means and the adoption of this proposed rule will not affect this requirement. Electronic reporting involves the transfer of data from a packer's or importer's electronic recordkeeping system to a centrally located AMS electronic database. The packer or

importer 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 is aggregated and processed into various market reports which are released according to the daily and weekly time schedule set forth in the LMR regulations. As an alternative, AMS also developed and made available web-based input forms for submitting data online as AMS found that some of the smaller entities covered under mandatory price reporting would benefit from such a web-based submission system.

Each packer and importer required to report information to USDA under LMR must maintain such records as are necessary to verify the accuracy of the information provided to AMS. This includes information regarding price, class, head count, weight, quality grade, yield grade, and other factors necessary to adequately describe each transaction. These records are already kept by the industry. Reporting packers and importers are required to maintain and 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 to maintain these records for a minimum of 2 years. Packers and importers are not required to report any other new or additional information they do not generally have available or maintain. Further, they are not required to keep any information that would prove unduly burdensome to maintain.

In addition, AMS has not identified any relevant federal rules currently in effect that duplicate, overlap, or conflict with this rule. Professional skills required for recordkeeping under the LMR regulations are not different than those already employed by the reporting entities. Reporting is accomplished using computers or similar electronic means. This proposed rule does not affect the professional skills required for recordkeeping 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.

*Alternatives.* This proposed rule would require swine and lamb packing plants of a certain size to report information to the Secretary at prescribed times throughout the day and week. The 1999 Act and these regulations exempt the vast majority of

small businesses by the establishment of slaughter, processing, and import capacity thresholds.

AMS recognizes that most of the economic impact of this proposed rule on those small entities required to report involves the manner in which information must be reported to the Secretary. However, in developing this proposed rule, AMS considered other means by which the objectives of this proposed rule could be accomplished, including reporting the required information by telephone, facsimile, and regular mail. AMS believes electronic submission to be the only method capable of allowing AMS to collect, review, process, aggregate, and publish reports while complying with the specific time-frames set forth in the Act and regulation.

To respond to concerns of smaller operations, AMS developed a web-based input form for submitting data online. Based on prior experience, AMS found that some of the smaller entities covered under mandatory price reporting would benefit from such a web-based submission system. Accordingly, AMS developed such a system for program implementation.

Additionally, to further assist small businesses, AMS may provide for an exception to electronic reporting in emergencies, such as power failures or loss of Internet accessibility, or in cases when an alternative is agreeable between AMS and the reporting entity.

Other than these alternatives, there are no other practical and feasible alternatives to the methods of data transmission that are less burdensome to small businesses. AMS will work actively with those small businesses required to report and minimize the burden on them to the maximum extent practicable.

#### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), we have included the changes in reporting and recordkeeping requirements for 7 CFR part 59 associated with this action into the program's request for an extension of a currently approved information collection for OMB 0581-0186 (Commodities Covered by the Livestock Mandatory Reporting Act of 1999).

#### *Executive Order 12988*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed 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 1999 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 *et seq.*); administer, enforce, or collect voluntary reports under the 1999 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. 49, 50). There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

#### Civil Rights Review

AMS has considered the potential civil rights implications of this proposed 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 who 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 will 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 proposed 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 federal LMR 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. AMS has considered the potential implications of this proposed rule to ensure this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

#### List of Subjects in 7 CFR Part 59

Cattle, Hogs, Lamb, Livestock, Sheep, Swine.

For the reasons set forth in the preamble, it is proposed that title 7, part 59 be amended as follows:

### PART 59—LIVESTOCK MANDATORY REPORTING

#### ■ 1. The authority citation for 7 CFR part 59 continues to read as follows:

**Authority:** 7 U.S.C. 1635–1636i.

- 2. Amend § 59.200 by:
  - a. Adding a definition for “Negotiated formula purchase;”
  - b. Revising the definition of “Other purchase arrangement;” and
  - c. Revising paragraphs (3) and (4) and adding paragraph (5) in the definition of “Type of purchase.”

The additions and revisions read as follows:

#### § 59.200 Definitions.

\* \* \* \* \*

**Negotiated formula purchase.** The term “negotiated formula purchase” means a swine or pork market formula purchase under which:

- (1) The formula is determined by negotiation on a lot-by-lot basis; and
- (2) The swine are scheduled for delivery to the packer not later than 14 days after the date on which the formula is negotiated and swine are committed to the packer.

\* \* \* \* \*

**Other purchase arrangement.** The term “other purchase arrangement” means a purchase of swine by a packer

that is not a negotiated purchase, swine or pork market formula purchase, negotiated formula purchase, or other market formula purchase; and does not involve packer-owned swine.

\* \* \* \* \*

#### *Type of purchase.* \* \* \*

(3) A swine or pork market formula purchase:

- (4) Other purchase arrangement; and
- (5) A negotiated formula purchase.

\* \* \* \* \*

■ 3. Amend § 59.202 by revising paragraphs (b)(2) through (4) to read as follows:

#### § 59.202 Mandatory daily reporting for barrows and gilts.

\* \* \* \* \*

#### *(b)* \* \* \*

(2) The total number of barrows and gilts, and barrows and gilts that qualify as packer-owned swine, purchased since 1:30 p.m. central time of the previous reporting day and up to that time of the reporting day through each type of purchase;

(3) All purchase data for base market hogs purchased since 1:30 p.m. central time of the previous reporting day and up to that time of the reporting day through negotiated purchases;

(4) All purchase data for base market hogs purchased through each type of purchase other than negotiated purchase since 1:30 p.m. central time of the previous reporting day and up to that time of the reporting day, unless such information is unavailable due to pricing that is determined on a delayed basis. The packer shall report information on such purchases on the first reporting day or scheduled reporting time on a reporting day after the price has been determined.

\* \* \* \* \*

■ 4. Amend § 59.300 by adding in alphabetical order a definition for “Lambs committed,” revising the definition for “Packer-owned lambs,” and adding in alphabetical order a definition for “Pelt” to read as follows:

#### § 59.300 Definitions.

\* \* \* \* \*

**Lambs committed.** The term “lambs committed” means lambs that are intended to be delivered to a packer beginning on the date of an agreement to sell the lambs.

\* \* \* \* \*

**Packer-owned lambs.** The term “packer-owned lambs” means lambs that a packer owns for at least 28 days immediately before slaughter.

**Pelt.** The term “pelt” means the skin and attached wool from a sheep or lamb carcass.

\* \* \* \* \*

■ 5. Amend § 59.302 by redesignating paragraphs (a)(6) and (7) as paragraphs (a)(7) and (8), adding new paragraphs (a)(6) and (9), and revising paragraph (b) to read as follows:

**§ 59.302 Mandatory weekly reporting for lambs.**

(a) \* \* \*

(6) The quantity (quoted in number of head) and delivery period for all committed lambs;

\* \* \* \* \*

(9) The following pelt information for lambs purchased through a negotiated purchase, formula marketing arrangement, or forward contract:

(i) The quantity (quoted in number of head) of pelts;

(ii) The source of the pelts (packer owned or producer owned lambs);

(iii) The price paid to the producer;

(iv) The length of wool (shorn or unshorn);

(v) The pelt classification (Supreme, Premium, Standard, Fair, Mixed Class, Damaged, and Puller).

(b) *Publication.* The Secretary shall make available to the public the information obtained in paragraphs (a)(1) through (6) and (a)(8) of this section on the second reporting day of the current slaughter week and information obtained in paragraphs (a)(7) and (9) of this section on the first reporting day of the current slaughter week.

Dated: February 19, 2016.

**Elanor Starmer,**

*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 Forms**

*Swine*

The following 2 forms would be used by entities required to report electronically transmitted mandatory market information on swine to AMS.

LS-118—Swine Prior Day Report

LS-119—Swine Daily Report

**Appendix B to Subpart D—Lamb Mandatory Reporting Forms**

*Lamb*

The following 2 forms would be used by entities required to report electronically transmitted mandatory market information on lambs and lamb pelts to AMS.

LS-123—Live Lamb Weekly Report

LS-133—Lamb Pelts Weekly Report

**Appendix C—Mandatory Reporting Guideline**

The following mandatory reporting form guidelines will be used by entities 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 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, if applicable).

(a) *Swine Mandatory Reporting Forms.* (See Appendix D for samples.)

(1) LS-118—Swine Prior Day Report.

(i) Slaughtered swine lot identification (11). Enter code used to identify the lot of slaughtered swine to the packer.

(ii) Slaughtered swine class code (12).

Enter the code that best describes the type of slaughtered swine in the lot.

(iii) Slaughtered swine purchase type code (13). Enter the code that describes the type of purchase for the slaughtered swine in the lot.

(iv) Slaughtered swine head count (14).

Enter the quantity of slaughtered swine in the lot in number of head.

(v) Slaughtered swine base price (15). Enter the base price established on that day for the lot of slaughtered swine in dollars per one hundred pounds.

(vi) Slaughtered swine average net price (16). Enter the average net price established on that day for the lot of slaughtered swine in dollars per one hundred pounds.

(vii) Slaughtered swine average live weight (17). Enter the average live weight of the lot of swine in pounds if slaughtered swine were purchased on a live basis, otherwise leave blank.

(viii) Slaughtered swine average carcass weight (18). Enter the average carcass weight of the lot of slaughtered swine in pounds.

(ix) Slaughtered swine average sort loss (19). Enter the average sort loss for the lot of slaughtered swine in dollars per one hundred pounds.

(x) Slaughtered swine average backfat (20). Enter the average backfat measurement for the lot of slaughtered swine in inches rounded to the nearest tenth of an inch.

(xi) Slaughtered swine average loin depth (21). Enter the average loin depth measurement for the lot of slaughtered swine in inches rounded to the nearest tenth of an inch.

(xii) Slaughtered swine average lean percentage (22). Enter the average lean percentage for the lot of slaughtered swine.

(xiii) Purchased swine lot identification (23). Enter code used to identify the lot of purchased swine to the packer.

(xiv) Purchased swine ownership code (24). Enter code which best describes the source of the purchased swine whether packer-owned, purchased from another packer, or all other swine.

(xv) Purchased swine class code (25). Enter the code that best describes the type of purchased swine.

(xvi) Purchased swine purchase type code (26). Enter the code that describes the type of purchase for the purchased swine.

(xvii) Purchased swine head count (27). Enter the quantity of purchased swine in the lot.

(xviii) Purchased swine average live weight (28). Enter the average live weight of the lot of swine in pounds if swine were purchased on a live basis, otherwise leave blank.

(xix) Purchased swine base price (29). Enter the base price established on that day for the lot of purchased swine in dollars per one hundred pounds.

(xx) Purchased swine origin (30). Enter the 2-letter postal abbreviation for the State in which the swine were fed to slaughter weight.

(xxi) Scheduled swine (31–44). Enter the number of head of purchase commitment swine that were scheduled for delivery for each of the next 14 days. Enter the total quantity currently scheduled for each day at the time of reporting for each submission.

(2) LS-119—Swine Daily Report.

(i) Purchased swine lot identification (11). Enter code used to identify the lot of purchased swine to the packer.

(ii) Purchased swine purchase type code (12). Enter the code that describes the type of purchase for the swine in the lot.

(iii) Purchased swine average live weight (13). Enter the average live weight of the lot of swine in pounds if swine were purchased on a live basis, otherwise leave blank.

(iv) Purchased swine class code (14). Enter the code that best describes the type of swine in the lot.

(v) Purchased swine head count (15). Enter the quantity of swine in the lot in number of head.

(vi) Purchased swine base price (16). Enter the base price established on that day for the lot of swine in dollars per one hundred pounds.

(vii) Purchased swine origin (17). Enter the 2-letter postal abbreviation for the State in which the swine were fed to slaughter weight.

(viii) Packer-sold swine purchases (18–25, 34–35). Enter the best estimate of the total number of packer-sold swine expected to be purchased throughout the reporting day for each purchase type and the total number of packer-sold swine purchased since 1:30 p.m. central of the previous reporting day up to that time of the reporting day for each purchase type.

(ix) All other swine purchases (26–33, 36–37). Enter the best estimate of the total number of all other swine expected to be purchased throughout the reporting day for each purchase type and the total number of all other swine purchased since 1:30 p.m. central of the previous reporting day up to that time of the reporting day for each purchase type.

(b) *Lamb Mandatory Reporting Forms.* (See Appendix D for samples.)

(1) LS-123—Live Lamb Weekly Report.

(i) Packer-Owned lot identification (11). Enter code used to identify the lot of packer-owned lambs to the packer.

(ii) Packer-Owned source (12). Enter “1”, domestic, if packer-owned lambs are from within the 50 States or “2”, imported, if lambs are from outside of the 50 States.

(iii) Packer-Owned head count (13). Enter the quantity of packer-owned lambs in the lot in number of head.

(iv) Packer-Owned actual carcass weight range (14a 14b). Enter the lowest (14a) and highest (14b) actual carcass weights for lambs in the lot in pounds.

(v) Packer-Owned actual average carcass weight (15). Enter the actual average carcass weight of the lot of packer-owned lambs in pounds.

(vi) Packer-Owned average dressing percentage (16). Enter the average dressing percentage of the lot of packer-owned lambs.

(vii) Percentage yield grade 3 or better (17). Enter the percentage of packer-owned lambs in the lot of a yield grade of 3 or better.

(viii) Quality grade percentage (18). Enter the percentage of packer-owned lambs in the lot of a quality grade of Choice or better.

(ix) Prior week slaughtered lambs head counts (19–24). Enter the total number of head of lambs slaughtered for the prior week that were purchased through forward contracts, the total number of head for lambs purchased through formula arrangements, and the total number of head of lambs purchased through negotiated cash, categorized by domestic or imported sources. Enter this information once per each week’s submission.

(x) Forward contract purchases lot identification (25). Enter code used to identify forward contracted lambs to the packer.

(xi) Forward contract purchases head count (26). Enter quantity of forward contracted lambs in the lot in number of head.

(xii) Forward contract purchases basis level (27). Enter the agreed upon adjustment to a future price to establish the final price of the forward contracted lambs in dollars per one hundred pounds.

(xiii) Forward contract purchases delivery month (28). Enter the delivery month of the lambs purchased through forward contracts as a 3-letter abbreviation.

(xiv) Committed lambs (29). Enter quantity of lambs committed to be delivered to the packer in number of head.

(xv) Committed delivery month (30). Enter the delivery month of the lambs committed for delivery to the packer as a 3-letter abbreviation.

(xvi) Committed delivery year (31). Enter the delivery year of the lambs committed for delivery to the packer as a 4-digit number.

(2) LS-133—Lamb Pelts Weekly Report.

(i) Lot identification (11). Enter code used to identify the lot of pelts.

(ii) Source (12). Enter “1”, packer owned, if the pelts were from packer owned lambs or “2”, producer owned, if the pelts are from producer owned lambs.

(iii) Length of Wool (13). Enter “1”, unshorn. Enter “2”, shorn.

(iv) Price (14). Enter the price per piece paid by the packer for each classification category of pelts in the lot.

(v) Volume (15). Enter the quantity in number of pieces or pelts in each classification category of the lot.

(vi) Classification (16). Enter the classification code that describes the classification category for the pelts in the lot.

#### Appendix D—Mandatory Reporting Forms

The swine and lamb mandatory forms follow the docket.

[FR Doc. 2016-03956 Filed 2-26-16; 8:45 am]

**BILLING CODE 3410-02-P**

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 986

[Docket No. AO-FV-15-0139; AMS-FV-15-0023; FV15-986-1]

#### Pecans Grown in the States of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas; Secretary’s Decision and Referendum Order on Proposed Marketing Agreement and Order No. 986

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule and referendum order.

**SUMMARY:** This Secretary’s Decision proposes the issuance of a marketing agreement and order (order) under the Agricultural Marketing Agreement Act of 1937 to cover pecans grown in the states of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas, and provides growers with the opportunity to vote in a referendum to determine if they favor its establishment. The proposed order would provide authority to collect industry data and to conduct research and promotion activities. In addition, the order would provide authority for the industry to recommend grade, quality and size regulation, as well as pack and container regulation, subject to approval by the Department of Agriculture (USDA). The program would be financed by assessments on pecan handlers and would be locally administered, under USDA oversight, by a Council of seventeen growers and shippers (handlers) nominated by the industry and appointed by USDA.

**DATES:** The referendum will be conducted from March 9 through March 30, 2016. Ballot materials will be sent to all known pecan growers in the proposed fifteen-state production area. To be eligible to vote, a grower must

have produced a minimum average, annual amount of 50,000 pounds of inshell pecans between August 1, 2011 and July 31, 2015, or must own a minimum of 30 pecan acres.

**ADDRESSES:** Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237.

#### FOR FURTHER INFORMATION CONTACT:

Melissa Schmaedick, Senior Marketing Specialist; Telephone: (202) 557-4783, Fax: (435) 259-1502, or Michelle Sharow, Rulemaking Branch Chief; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: [Melissa.Schmaedick@ams.usda.gov](mailto:Melissa.Schmaedick@ams.usda.gov) or [Michelle.Sharow@ams.usda.gov](mailto:Michelle.Sharow@ams.usda.gov).

Small businesses may request information on this proceeding by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing issued on June 26, 2015, and published in the July 2, 2015, issue of the **Federal Register** (80 FR 38021); Recommended Decision and Opportunity to File Written Exceptions issued on October 20, 2015, and published in the October 28, 2015, issue of the **Federal Register** (80 FR 66372).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866, 13563, and 13175. Notice of this rulemaking action was provided to tribal governments through USDA’s Office of Tribal Relations; no comments have been received.

#### Preliminary Statement

This Secretary’s Decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act,” and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). The proposed marketing order is authorized under section 8(c) of the Act.

The proposed marketing agreement and order are based on the record of a public hearing held July 20 through July 21, 2015, in Las Cruces, New Mexico; July 23 through July 24, 2015, in Dallas, Texas; and, July 27 through July 29,