

Pars. (13) to (23). Pub. L. 114-54, §102(a)(1), redesignated pars. (12) to (22) as (13) to (23), respectively.

Par. (23)(D), (E). Pub. L. 114-54, §102(a)(4), added subpar. (D) and redesignated former subpar. (D) as (E).

2006—Par. (4). Pub. L. 109-296, §2(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The term ‘base market hog’ means a hog for which no discounts are subtracted from and no premiums are added to the base price.”

Par. (5). Pub. L. 109-296, §2(b), amended heading and text of par. (5) generally. Prior to amendment, text read as follows: “The term ‘bred female swine’ means any female swine, whether a sow or gilt, that has been mated or inseminated and is assumed, or has been confirmed, to be pregnant.”

Par. (12)(B). Pub. L. 109-296, §2(c)(1), added subpar. (B) and struck out former subpar. (B) which read as follows: “for any calendar year, the term includes only a swine processing plant that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years; and”.

Par. (12)(C). Pub. L. 109-296, §2(c)(2), inserted “or person” after “swine processing plant”, “plant capacity of the processing plant”, and “determining whether the processing plant”.

§ 1635j. Mandatory reporting for swine

(a) Establishment

The Secretary shall establish a program of swine price information reporting that will—

- (1) provide timely, accurate, and reliable market information;
- (2) facilitate more informed marketing decisions; and
- (3) promote competition in the swine slaughtering industry.

(b) General reporting provisions applicable to packers and the Secretary

(1) In general

The Secretary shall establish and implement a price reporting program in accordance with this section that includes the reporting and publication of information required under this section.

(2) Packer-owned swine

Information required under this section for packer-owned swine shall include quantity and carcass characteristics, but not price.

(3) Packer-sold swine

If information regarding the type of purchase is required under this section, the information shall be reported according to the numbers and percentages of each type of purchase comprising—

- (A) packer-sold swine; and
- (B) all other swine.

(4) Additional information

(A) Review

The Secretary shall review the information required to be reported by packers under this section at least once every 2 years.

(B) Outdated information

After public notice and an opportunity for comment, subject to subparagraph (C), the Secretary shall promulgate regulations that specify additional information that shall be reported under this section if the Secretary

determines under the review under subparagraph (A) that—

- (i) information that is currently required no longer accurately reflects the methods by which swine are valued and priced by packers; or
- (ii) packers that slaughter a significant majority of the swine produced in the United States no longer use backfat or lean percentage factors as indicators of price.

(C) Limitation

Under subparagraph (B), the Secretary may not require packers to provide any new or additional information that—

- (i) is not generally available or maintained by packers; or
- (ii) would be otherwise unduly burdensome to provide.

(c) Daily reporting; barrows and gilts

(1) Prior day report

(A) In general

The corporate officers or officially designated representatives of each packer processing plant that processes barrows or gilts shall report to the Secretary, for each business day of the packer, such information as the Secretary determines necessary and appropriate to—

- (i) comply with the publication requirements of this section; and
- (ii) provide for the timely access to the information by producers, packers, and other market participants.

(B) Reporting deadline and plants required to report

A packer required to report under subparagraph (A) shall—

- (i) not later than 7:00 a.m. Central Time on each reporting day, report information regarding all barrows and gilts purchased or priced, and
- (ii) not later than 9:00 a.m. Central Time on each reporting day, report information regarding all barrows and gilts slaughtered,

during the prior business day of the packer.

(C) Information required

The information from the prior business day of a packer required under this paragraph shall include—

- (i) all purchase data, including—
 - (I) the total number of—
 - (aa) barrows and gilts purchased; and
 - (bb) barrows and gilts scheduled for delivery; and
 - (II) the base price and purchase data for slaughtered barrows and gilts for which a price has been established;
- (ii) all slaughter data for the total number of barrows and gilts slaughtered, including—

(I) information concerning the net price, which shall be equal to the total amount paid by a packer to a producer (including all premiums, less all dis-

counties and other expenses) for the slaughter of the barrows and gilts, and

(II) information concerning the net price, which shall be equal to the total amount paid by a packer to a producer (including all premiums, less all dis-

counts) per hundred pounds of carcass weight of barrows and gilts delivered at the plant—

(aa) including any sum deducted from the price per hundredweight paid to a producer that reflects the repayment of a balance owed by the producer to the packer or the accumulation of a balance to later be repaid by the packer to the producer; and

(bb) excluding any sum earlier paid to a producer that must later be repaid to the packer;

(II) information concerning the average net price, which shall be equal to the quotient (stated per hundred pounds of carcass weight of barrows and gilts) obtained by dividing—

(aa) the total amount paid for the barrows and gilts slaughtered at a packing plant during the applicable reporting period, including all premiums and discounts, and including any sum deducted from the price per hundredweight paid to a producer that reflects the repayment of a balance owed by the producer to the packer, or the accumulation of a balance to later be repaid by the packer to the producer, less all discounts; by

(bb) the total carcass weight (in hundred pound increments) of the barrows and gilts;

(III) information concerning the lowest net price, which shall be equal to the lowest net price paid for a single lot or a group of barrows or gilts slaughtered at a packing plant during the applicable reporting period per hundred pounds of carcass weight of barrows and gilts;

(IV) information concerning the highest net price, which shall be equal to the highest net price paid for a single lot or group of barrows or gilts slaughtered at a packing plant during the applicable reporting period per hundred pounds of carcass weight of barrows and gilts;

(V) the average carcass weight, which shall be equal to the quotient obtained by dividing—

(aa) the total carcass weight of the barrows and gilts slaughtered at the packing plant during the applicable reporting period, by

(bb) the number of the barrows and gilts described in item (aa),

adjusted for special slaughter situations (such as skinning or foot removal), as the Secretary determines necessary to render comparable carcass weights;

(VI) the average sort loss, which shall be equal to the average discount (in dollars per hundred pounds carcass weight) for barrows and gilts slaughtered during the applicable reporting period, resulting from the fact that the barrows and gilts did not fall within the individual packer's established carcass weight or lot variation range;

(VII) the average backfat, which shall be equal to the average of the backfat thickness (in inches) measured between the third and fourth from the last ribs, 7 centimeters from the carcass split (or adjusted from the individual packer's measurement to that reference point using an adjustment made by the Secretary) of the barrows and gilts slaughtered during the applicable reporting period;

(VIII) the average lean percentage, which shall be equal to the average percentage of the carcass weight comprised of lean meat for the barrows and gilts slaughtered during the applicable reporting period, except that when a packer is required to report the average lean percentage under this subclause, the packer shall make available to the Secretary the underlying data, applicable methodology and formulae, and supporting materials used to determine the average lean percentage, which the Secretary may convert to the carcass measurements or lean percentage of the barrows and gilts of the individual packer to correlate to a common percent lean measurement; and

(IX) the total slaughter quantity, which shall be equal to the total number of barrows and gilts slaughtered during the applicable reporting period, including all types of purchases and barrows and gilts that qualify as packer-owned swine; and

(iii) packer purchase commitments, which shall be equal to the number of barrows and gilts scheduled for delivery to a packer for slaughter for each of the next 14 calendar days.

(D) Publication

(i) In general

The Secretary shall publish the information obtained under this paragraph in a prior day report—

(I) in the case of information regarding barrows and gilts purchased or priced, not later than 8:00 a.m. Central Time, and

(II) in the case of information regarding barrows and gilts slaughtered, not later than 10:00 a.m. Central Time,

on the reporting day on which the information is received from the packer.

(ii) Price distributions

The information published by the Secretary under clause (i) shall include—

(I) a distribution of net prices in the range between and including the lowest net price and the highest net price reported;

(II) a delineation of the number of barrows and gilts at each reported price level or, at the option of the Secretary, the number of barrows and gilts within each of a series of reasonable price bands within the range of prices; and

(III) the total number and weighted average price of barrows and gilts purchased through negotiated purchases and negotiated formula purchases.

(2) Morning report

(A) In general

The corporate officers or officially designated representatives of each packer processing plant that processes barrows or gilts shall report to the Secretary not later than 10:00 a.m. Central Time each reporting day—

(i) the packer's best estimate of the total number of barrows and gilts, and barrows and gilts that qualify as packer-owned swine, expected to be purchased throughout the reporting day through each type of purchase;

(ii) the total number of barrows and gilts, and barrows and gilts that qualify as packer-owned swine, purchased up to that time of the reporting day through each type of purchase;

(iii) the base price paid for all base market hogs purchased up to that time of the reporting day through negotiated purchases; and

(iv) the base price paid for all base market hogs purchased through each type of purchase other than negotiated purchase up to that time of the reporting day, unless such information is unavailable due to pricing that is determined on a delayed basis.

(B) Publication

The Secretary shall publish the information obtained under this paragraph in the morning report as soon as practicable, but not later than 11:00 a.m. Central Time, on each reporting day.

(3) Afternoon report

(A) In general

The corporate officers or officially designated representatives of each packer processing plant that processes barrows or gilts shall report to the Secretary not later than 2:00 p.m. Central Time each reporting day—

(i) the packer's best estimate of the total number of barrows and gilts, and barrows and gilts that qualify as packer-owned swine, expected to be purchased throughout the reporting day through each type of purchase;

(ii) the total number of barrows and gilts, and barrows and gilts that qualify as packer-owned swine, purchased up to that time of the reporting day through each type of purchase;

(iii) the base price paid for all base market hogs purchased up to that time of the reporting day through negotiated purchases; and

(iv) the base price paid for all base market hogs purchased up to that time of the reporting day through each type of purchase other than negotiated purchase, unless such information is unavailable due to pricing that is determined on a delayed basis.

(B) Publication

The Secretary shall publish the information obtained under this paragraph in the afternoon report as soon as practicable, but not later than 3:00 p.m. Central Time, on each reporting day.

(C) Late in the day report information

The Secretary shall include in the morning report and the afternoon report for the following day any information required to be reported under subparagraph (A) that is obtained after the time of the reporting day specified in that subparagraph.

(d) Daily reporting; sows and boars

(1) Prior day report

The corporate officers or officially designated representatives of each packer of sows and boars shall report to the Secretary, for each business day of the packer, such information reported by hog class as the Secretary determines necessary and appropriate to—

(A) comply with the publication requirements of this section; and

(B) provide for the timely access to the information by producers, packers, and other market participants.

(2) Reporting

Not later than 9:30 a.m. Central Time, or such other time as the Secretary considers appropriate, on each reporting day, a packer required to report under paragraph (1) shall report information regarding all sows and boars purchased or priced during the prior business day of the packer.

(3) Information required

The information from the prior business day of a packer required under this subsection shall include all purchase data, including—

(A) the total number of sows purchased and the total number of boars purchased, each divided into at least three reasonable and meaningful weight classes specified by the Secretary;

(B) the number of sows that qualify as packer-owned swine;

(C) the number of boars that qualify as packer-owned swine;

(D) the average price paid for all sows;

(E) the average price paid for all boars;

(F) the average price paid for sows in each weight class specified by the Secretary under subparagraph (A);

(G) the average price paid for boars in each weight class specified by the Secretary under subparagraph (A);

(H) the number of sows and the number of boars for which prices are determined, by each type of purchase;

(I) the average prices for sows and the average prices for boars for which prices are determined, by each type of purchase; and

(J) such other information as the Secretary considers appropriate to carry out this subsection.

(4) Price calculations without packer-owned swine

A packer shall omit the prices of sows and boars that qualify as packer-owned swine from

all average price calculations, price range calculations, and reports required by this subsection.

(5) Reporting exception: public auction purchases

The information required to be reported under this subsection shall not include purchases of sows or boars made by agents of the reporting packer at a public auction at which the title of the sows and boars is transferred directly from the producer to such packer.

(6) Publication

The Secretary shall publish the information obtained under this paragraph in a prior day report not later than 11:00 a.m. Central Time on the reporting day on which the information is received from the packer.

(7) Electronic submission of information

The Secretary of Agriculture shall provide for the electronic submission of any information required to be reported under this subsection through an Internet website or equivalent electronic means maintained by the Department of Agriculture.

(e) Weekly noncarcass merit premium report

(1) In general

Not later than 4:00 p.m. Central Time on the first reporting day of each week, the corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary a noncarcass merit premium report that lists—

(A) each category of standard noncarcass merit premiums used by the packer in the prior slaughter week; and

(B) the amount (in dollars per hundred pounds of carcass weight) paid to producers by the packer, by category.

(2) Premium list

A packer shall maintain and make available to a producer, on request, a current listing of the dollar values (per hundred pounds of carcass weight) of each noncarcass merit premium used by the packer during the current or the prior slaughter week.

(3) Availability

A packer shall not be required to pay a listed noncarcass merit premium to a producer that meets the requirements for the premium if the need for swine in a given category is filled at a particular point in time.

(4) Publication

The Secretary shall publish the information obtained under this subsection as soon as practicable, but not later than 5:00 p.m. Central Time, on the first reporting day of each week.

(Aug. 14, 1946, ch. 966, title II, § 232, as added Pub. L. 106-78, title IX, § 911(2), Oct. 22, 1999, 113 Stat. 1195; amended Pub. L. 109-296, §§ 3, 4, Oct. 5, 2006, 120 Stat. 1465, 1468; Pub. L. 114-54, title I, § 102(b), Sept. 30, 2015, 129 Stat. 514.)

Editorial Notes

AMENDMENTS

2015—Subsec. (c)(1)(D)(ii). Pub. L. 114-54, § 102(b)(1), added cl. (ii) and struck out former cl. (ii). Prior to

amendment, text read as follows: “The information published by the Secretary under clause (i) shall include a distribution of net prices in the range between and including the lowest net price and the highest net price reported. The publication shall include a delineation of the number of barrows and gilts at each reported price level or, at the option of the Secretary, the number of barrows and gilts within each of a series of reasonable price bands within the range of prices.”

Subsec. (c)(3)(C). Pub. L. 114-54, § 102(b)(2), added subpar. (C).

2006—Subsec. (c). Pub. L. 109-296, § 3, amended heading and text of subsec. (c) generally. Prior to amendment, text related to daily reporting.

Subsecs. (d), (e). Pub. L. 109-296, § 4, added subsec. (d) and redesignated former subsec. (d) as (e).

§ 1635k. Mandatory reporting of wholesale pork cuts

(a) Reporting

The corporate officers or officially designated representatives of each packer shall report to the Secretary information concerning the price and volume of wholesale pork cuts, as the Secretary determines is necessary and appropriate.

(b) Publication

The Secretary shall publish information reported under subsection (a) as the Secretary determines necessary and appropriate.

(Aug. 14, 1946, ch. 966, title II, § 233, as added Pub. L. 111-239, § 2(b)(1), Sept. 27, 2010, 124 Stat. 2501.)

Statutory Notes and Related Subsidiaries

NEGOTIATED RULEMAKING PROCESS

Pub. L. 111-239, § 2(b)(2)-(4), Sept. 27, 2010, 124 Stat. 2501, as amended by Pub. L. 117-286, § 4(a)(25), Dec. 27, 2022, 136 Stat. 4307, provided that:

“(2) **NEGOTIATED RULEMAKING.**—The Secretary of Agriculture shall establish a negotiated rulemaking process pursuant to subchapter III of chapter 5 of title 5, United States Code, to negotiate and develop a proposed rule to implement the amendment made by paragraph (1) [enacting this section].

“(3) **NEGOTIATED RULEMAKING COMMITTEE.**—

“(A) **REPRESENTATION.**—Any negotiated rulemaking committee established by the Secretary of Agriculture pursuant to paragraph (2) shall 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) among interested parties that participate in swine or pork production.

“(B) **INAPPLICABILITY OF CHAPTER 10 OF TITLE 5, UNITED STATES CODE.**—Any negotiated rulemaking committee established by the Secretary of Agriculture pursuant to paragraph (2) shall not be subject to chapter 10 of title 5, United States Code.

“(4) **TIMING OF PROPOSED AND FINAL RULES.**—In carrying out the negotiated rulemaking process under paragraph (2), the Secretary of Agriculture shall ensure that—

“(A) any recommendation for a proposed rule or report is provided to the Secretary of Agriculture not later than 180 days after the date of the enactment of this Act [Sept. 27, 2010]; and

“(B) a final rule is promulgated not later than one and a half years after the date of the enactment of this Act.”