

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

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

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

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

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

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

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

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

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

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

#### *Confidentiality*

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

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

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

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

As stated in the proposed rule (65 FR 53669), "to ensure confidentiality, information will only be published if it is obtained from no fewer than three packers representing a minimum of three companies, and no packer represents a dominant portion of the region's total" for the particular report.

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