

adjustments to the base price as determined by carcass and noncarcass traits. This section includes carcass merit premium and discount schedules, grading devices and formulas, and noncarcass merit premiums and discounts, specifying the dollar or percentage adjustment (or range) of the premium or discount. The "application of ledger" section includes terms related to the application and use of ledger or accrual accounts. This section includes information from contract terms specifying window/target price, window conditions, limits on the ledger, and termination of ledger. The "other provisions" section includes terms related to any item other than those listed above, such as quality and weight, purchase conditions and payment, volume and delivery, business practices, and general contract terms.

We will group like information and list it with descriptive headings. For example, the section that provides the determination of base price information will organize the base prices by several key pieces of information (Name, Version, Series, Time Period) for example, Iowa/Southern Minnesota, Mid-Session, Weighted Average, Day of Delivery. Additional details that complete the determination of base price will be listed with these key pieces of information. This approach will allow users to see the range of base price options.

When we tested the summary report we involved individuals within USDA who have backgrounds in and knowledge of hog marketing, including some former hog producers. Where possible, within the confidentiality requirements, we made changes based on their suggestions to simplify the presentation of the information and make the information more accessible and understandable.

Availability of Contracts

Comment: Must packers make contracts available to every producer?

Response: No. This regulation requires packers to submit example contracts to GIPSA; neither the amendments to the P&S Act that created the swine contract library or this regulation implementing it imposes requirements for how or to whom a packer makes a contract available. Packers must continue to comply with the requirements in the P&S Act and related regulations. We did not make any changes in response to this comment.

Enforcement

Comment: Does GIPSA intend to audit the estimates of the number of

contracted swine that packers must submit in monthly reports?

Response: Yes, on an ongoing basis, GIPSA will monitor and review the accuracy of the estimates of the number of contracted swine that packers specify in the submitted monthly reports. In addition, we will monitor and review the example contract submissions and the monthly reports for completeness, consistency, and accuracy. As specified in the proposed rule, packers must maintain records to verify the accuracy of the information required to be reported. Therefore, we did not make any changes in response to this comment.

Comment: What will the penalty be for not including carcass or noncarcass premiums and discounts in the reported contract?

Response: The reported example contract must be complete and, therefore, must include all carcass and noncarcass premiums and discounts associated with the example contract. As specified in new section 222(e) of the P&S Act, to willfully fail or refuse to provide accurate information constitutes a violation of the P&S Act. Excluding carcass or noncarcass premiums or discounts that apply to the contract from the reported example contracts would constitute a violation of Title II of the P&S Act. Section 203 of the P&S Act sets forth the procedures that the Secretary is authorized to follow whenever there is reason to believe that any packer has violated or is violating a provision of Title II of the P&S Act. Section 203 of the P&S Act also specifies the sanction that may be assessed if the Secretary determines that a violation has occurred.⁸ Therefore, we did not make any changes in response to this comment.

State Laws

Comment: Minnesota, Iowa, and several other Corn Belt States have forbidden contract clauses requiring contract terms to be kept confidential. In addition, Minnesota requires packers to file contracts. Will these State laws be preempted?

Response: No. The state statutory requirement that there be no confidentiality clause in contracts will not be preempted, but GIPSA will comply with the P&S Act amendment requirement that requires confidentiality of certain information from contracts submitted to GIPSA for the swine contract library.

⁸ Any such violation will be subject to an order to cease and desist from continuing such violation and a civil penalty of not more than \$11,000 for each such violation.

Implementation of the swine contract library will not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with the statute. The state laws mentioned in the comment do not appear to present an irreconcilable conflict with the statute or this regulation which implements the statute. We did not make any changes in response to this comment.

Evaluate Contracts

Comment: Knowing the provisions of contracts and being able to differentiate the value of various contracts and contract terms are two different things. Will GIPSA or some other USDA agency provide a test or worksheet that a producer can use to evaluate contracts in the future?

Response: The purpose of the swine contract library is to provide information to producers and other interested parties about the contract types and terms available from packers; it will not provide guidance for evaluating contracts. However, through the GIPSA Web site on the Internet, we provide links to information that may help producers evaluate livestock and poultry contracts. In addition, through the AMS Web site on the Internet, AMS provides information on contracting in agriculture and making the right decisions about contracting. We did not make any changes in response to this comment.

Summary of Changes to the Rule

As discussed above, in response to comments, we made changes to the rule. Also, we made a number of additional changes to improve consistency, clarity, and make corrections. All of the changes to the rule are summarized below.

In response to comments, we made the following changes:

- We eliminated the use of the words "offer," "offers," "offered," and "offering." We replaced the use of the word "offer" as in "new offers" with "contracts made available" or "available contracts" as appropriate. These changes appear in the definition of the term "noncarcass merit premium or discount," paragraphs 206.2(c) (title and text), (h), 206.3(c)(1), (c)(2), and (g)(3)(ii).

- We changed the term "type of contract" to "contract type." These changes appear in the definition of the term and in paragraphs 206.2(f), 206.3(c)(2), (3), (5), (g)(iii), and (v). Other changes included correcting the definition of "contract type" by adding a comma after the word packer in the first sentence, in paragraph 206.3(g)(3)(iii), and correcting the