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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: On April 2, 2001, the U.S. Department of Agriculture (USDA), 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 final rule reflects the work of the USDA Wholesale Pork Reporting Negotiated Rulemaking Committee (Committee).

DATES: *Effective Date:* This rule is effective on January 7, 2013.

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, and enhanced the program's overall effectiveness and efficiency based on AMS' 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 USDA; 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 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. Previously, pork processors were not required by law to report wholesale pork cut prices. Rather, AMS collected 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 frequently results in missing or unreportable price quotes for subprimals.

This final rule is issued 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 final rule requires packers to report wholesale pork sales to AMS. Specifically, the rule outlines what information packers will be required to submit to AMS, how the information should be submitted, and other program requirements. Packers will 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.

The final rule is effective January 7, 2013. The effective date for this final rule is the date on which packers are required to submit data. Data submitted after this date is subject to audit for compliance with the 1999 Act and subsequent regulations, including this final rule.

During the 4-month period following the publication of the regulation, AMS will conduct an industry education and outreach program concerning the provisions and requirements of this rule. The Agency believes this period of time is adequate for packers to adapt to the wholesale pork reporting requirements.

AMS plans to continue publishing voluntary wholesale pork reports for a period of 180 days after the effective date of this regulation.

Costs and Benefits

The benefits of this rule are diffuse and difficult to quantify; therefore, this analysis considers benefits only on a qualitative basis. The qualitative benefits derived from the literature 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 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 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 Executive Order 12866 section.

Negotiated Rulemaking Committee

AMS convened a negotiated rulemaking committee to develop the regulatory language outlined in this rule as mandated by the 2010 Reauthorization Act. The negotiated rulemaking process, which is authorized by the Negotiated Rulemaking Act of 1996 (NRA) (5 U.S.C. 561–570), involves a committee composed of people representing interests that will be significantly affected by the rule, and the rulemaking agency developing the regulations.

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 (one 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. The language developed by the Committee served as the basis for the proposed rule (77 FR 16951) and the regulatory text outlined in this final rule.

Reporting Requirements

Pork processors, or packers, will be required to report sales of wholesale pork to AMS so that AMS may produce timely, meaningful market 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 or 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 to highlight major components of the rule.

Definition of Wholesale Pork

The term ''wholesale pork'' represents what is widely considered wholesale pork to packers, processors, retailers, and others in the supply chain. For example, items with commonly-added ingredients used to extend shelf life, such as a salt or sodium phosphate solution, are included in this definition, and, therefore, required to be reported. However, items that are flavored (e.g., teriyaki pork tenderloins, seasoned ribs, lemon pepper sirloin roasts) are not considered wholesale pork and are, therefore, excluded from LMR reporting requirements. For the purposes of this rule, offal (*e.g.,* heart, kidney) is not considered wholesale pork; whereas processing floor variety meats that are normally harvested from the chilled carcass—such as neck bones, tails, skins, feet, hocks, jowls, and backfat—are considered wholesale pork and must be reported.

Reporting Times

Packers will be required to report twice a day (by 10:00 a.m. and 2:00 p.m. Central Time) for barrow and gilt product and once per day (by 2:00 p.m. Central Time) for sow and boar product. These reporting times are outlined in section 59.205, and are consistent with reporting times for other commodities covered under LMR. Separation of the reporting requirements for sow and boar product will minimize the reporting burden on sow and boar packers where possible and makes 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.

Price Reporting Basis

Packers will submit prices using two different reporting bases: Free-on-Board (F.O.B.) Omaha basis, which was used for the voluntary program; and F.O.B. Plant basis, which is used for mandatory reporting of boxed beef and lamb. This method is used to assuage concern within the industry that moving to a different reporting basis would cause unnecessary disruption in the marketplace. To ensure consistent and uniform methodology is used to obtain F.O.B. Omaha prices, AMS will provide freight information. While this information is not part of the regulation and will not be published in the Code of Federal Regulations, AMS received comments during the public comment period that its proposed methodology did not capture all the variables involved in determining the cost of transportation. In response, AMS will investigate alternative methods for deriving an F.O.B. Omaha price and will consult, as necessary, with industry stakeholders. AMS is currently engaged in this research in order to have resolution by the informational meeting with packers, which will be scheduled following the publication of in the final rule. AMS does not believe this approach will impede or hinder packers' ability to adapt or develop information technology systems or otherwise prepare for mandatory wholesale pork reporting.

As discussed in the proposed rule, AMS initially 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 believed a simpler option was 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 F.O.B. Omaha price submitted to AMS. AMS also believed this method would be easier for reporting packers to comply with and document for audit purposes. It should be noted that regardless of the final method for determining freight, AMS will revisit this information on a quarterly basis to ensure it is up-to-date.

Prices 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, costs for things such as accruals or rebates, if known at the time of transaction, should be removed from the price provided to AMS. The requirements for reporting prices of wholesale pork sales are outlined in section 59.205.

Product Characteristics

Outlined below are items characteristic of a sale that will be reported to AMS. These items are discussed below appear in section 59.205.

Type of Sale. When packers report sales of wholesale pork to AMS, they will be identified using one of these three categories: Negotiated, forward, or formula marketing arrangement. A negotiated sale is one that represents what is considered the ''spot'' market, and, therefore, 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). To ensure consistency with current industry practices, the day after the seller-buyer agreement will be considered ''Day 1'' for reporting delivery periods.

The definition of a forward sale is designed to capture transactions that occur outside the traditional negotiated, or spot, window. Therefore, the 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 definition of a formula marketing arrangement bases the price paid not on seller-buyer interaction and agreement on a given day, but instead in reference to publicly available quoted prices. The definition of formula marketing arrangement was revised based on comments received to remove the requirement that this type of sale only covered product that had not already been produced. These definitions for the terms ''Type of sale,'' ''Negotiated sale,'' ''Forward sale,'' and ''Formula marketing agreement'' appear in section 59.200.

Specifications. Packers will report a description of the specifications of each pork item being transacted (e.g., vacuum-packed ¼ inch loins) to AMS. It will be the agency's responsibility to group like products together for the purpose of publishing reports. The item's specification will also contain weight ranges for the product. Characteristics that entities would be required to report are outlined in section 59.205(a)(1).

Product Delivery Period. Packers will report the delivery period for negotiated pork trades in calendar days, as outlined in section 59.205(a)(1). This is consistent with other commodities reported under LMR, but is a change from the way transactions were reported under the voluntary system.

Pork class. Packers will report the type of swine from which the product was derived from one of three categories: Barrow/gilt, sow, or boar. This is outlined in section 59.205(a)(1) and is accompanied by a definition for ''pork class'' in section 59.200.

Destination. Packers will report a product's destination in one of three categories: Domestic, Export overseas, or North American Free Trade Agreement (NAFTA).

Refrigeration. Packers will report a product's refrigeration type 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 provides a means for identifying product that may be discounted due to potential shelf life limitations. For reporting purposes, ''Day 1'' is considered the day after production. The form contained in Appendix A provides timeframes against which packers will report product refrigeration.

Specialty Pork Products. Packers will be required to report specialty pork products in order to capture trade of wholesale pork that is produced or marketed under any specialty program, such as, but not limited to, genetically-selected pork, certified programs, or specialty selection programs for quality or breed characteristics. A trademark brand on a product will not by itself make the product a specialty pork product, as outlined in section 59.200.

General Provisions

This rule amends the regulations issued in 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 conforming changes are necessary to fully incorporate wholesale pork into Subpart A, and are largely administrative in nature. Most sections in Subpart A remain unchanged, but are discussed here to provide context for the reader.

Section 59.10 details how packers will 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 recordkeeping 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 were made to section 59.10 to accommodate the additional requirement of reporting wholesale pork cuts.

This rule requires the reporting of specific market information regarding the sales of wholesale pork products. Section 59.20 is amended by the addition of *(f), Reporting Sales of Wholesale Pork.* In addition to the aforementioned reporting requirements, packers will 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 documentation 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. 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 amended to require packers to report prices on both a plant and Omaha basis. The change to the term ''Lot'' adds wholesale pork. There is also an administrative change 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 will be changed as a result of this rule, 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 in the proposed rule (77 FR 16951), 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, were discussed in the proposed rule and were further supported by some of the comments received by AMS during the comment period. For a complete discussion of these recommendations, see the ''Comments and Responses'' section of this rule.

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 be reported 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.

Comments and Responses

AMS received nine comments in response to the proposed rule (77 FR 16951). In general, commenters were supportive of the proposal, bringing wholesale pork under LMR, and of the negotiated rulemaking process. Many of the comments dealt with issues outside the scope of the proposed regulation, such as development of reports, transition period, and training sessions.

Definitions

Two commenters stated that the definition of ''Specialty pork product'' should be amended to clarify that the examples identified in the definition of what constitutes a specialty pork product are not limiting or all inclusive. AMS agrees with this comment and believes the changes proposed do not contradict, only clarify, the work of the Committee. Accordingly, AMS has amended the definition of specialty pork product as it appears in this rule.

One commenter suggested AMS amend the definition of ''Formula marketing arrangement'' because the inclusion of the phrase ''executed in advance of manufacture'' would exclude formula-priced product whose sale is agreed upon following manufacture. AMS agrees with this comment and believes the changes proposed do not contradict, only clarify, the work of the Committee. Accordingly, AMS has amended the definition of formula marketing arrangement as it appears in this rule.

Costs of Compliance With the Rule

One commenter asked that AMS provide technical support personnel that packers can easily access as a means of reducing start-up costs. As outlined in the preamble of the proposed rule and in this final rule, AMS recognizes there are costs associated with complying with this new requirement of LMR. Further, AMS understands the differences that exist among companies, information technology (IT) systems, and business structure. While AMS does not have the resources to dedicate an IT specialist to this transition, it will make every effort to provide IT support when needed by packers. 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 the 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. Another commenter suggested that AMS' estimates for initial start-up costs and annual submission costs were too low; however, the commenter did not provide additional information.

Transition Period

Three commenters asserted that the 6-month transition period during which both mandatory and voluntary reports will be published side-by-side is insufficient and suggested instead a 12-month transition period. Commenters suggested that a 6-month period would not allow for observance of the seasonal differences that may exist, and, subsequently, would not provide market participants with enough information to adjust price formulas properly. While these comments do not pertain to the regulation, but rather to AMS' implementation of the mandatory wholesale pork reporting program, AMS will take these suggestions into account.

As described in the proposed rule, 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.

Freight Calculations

Three commenters stated their belief that the freight calculation methodology proposed by AMS is too simplistic. Commenters suggested that there are associated costs with loading product that may not be included if a simple ''per mile'' freight cost is used. Commenters believed this would result in F.O.B. Omaha prices that are higher than they should be, and that the agency should consider issues involving less-than-truckload (LTL) freight rates. While these comments do not pertain to the regulation, but rather to AMS' implementation of the mandatory wholesale pork reporting program, AMS will take these suggestions into account. AMS plans to discuss the freight calculation with stakeholders, with the goal of having the final methodology determined for the planned workshops. Additional discussion is provided in the Reporting Requirements section of this document.

Reporting of Products

Two commenters requested that AMS keep the reporting of pork skins destined for domestic, North American Free Trade Agreement (NAFTA), and overseas markets separate and distinct. While these comments do not pertain to the regulation, but rather to AMS' implementation of the mandatory wholesale pork reporting program, AMS will take these suggestions into account. Further, AMS is unable to determine if confidentiality issues will arise regarding these products until information is submitted under the new program. The 1999 Act requires USDA to publish mandatory data on livestock and meat price trends, contracting arrangements, and supply and demand conditions in a manner that protects the identity of reporting entities and preserves the confidentiality of proprietary transactions. AMS' guidelines, which are commonly referred to as the ''3/70/20 rule'' requires the following three conditions be met for publication of information: (1) At least three reporting entities need to provide data at least 50 percent of the time over the most recent 60-day time period; (2) No single reporting entity may provide more than 70 percent of the data for a report over the most recent 60-day time period; and (3) No single reporting entity may be the sole reporting entity for an individual report more than 20 percent of the time over the most recent 60-day time period.

Training and Outreach

One commenter suggested that AMS conduct training sessions for packers who will be required to submit wholesale pork prices under LMR. AMS agrees with this comment and has allotted $20,000 in funds for this type of activity, as outlined in the Executive Order 12866 and Executive Order 13563 sections of the proposed rule (77 FR 16951) and this rule.

Executive Order 12988

This 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 rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this 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 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 national 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 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 ''not significant'' under section 3(f) of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB). The proposed rule (77 FR 16951), however, was designated significant; and, therefore, AMS prepared a cost-benefit analysis for the proposed rule, and it was reviewed by OMB. For the final rule, AMS has prepared a cost-benefit analysis notwithstanding this rule's non-significant designation.

Regulations must be designed in the most cost-effective manner possible to obtain the regulatory objective while imposing the least burden on society. This 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.

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.

Alternatives to the rule's 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.

Until the promulgation of this rule, pork processors were not required by law to report wholesale pork cut prices. Rather, AMS collected 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 frequently results in 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 had 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 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 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

[1] ''The Sveriges Riksbank 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.

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 model. 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:

- 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;
- Allows AMS more opportunity to keep wholesale pork reporting current with industry marketing practices and product offerings; and
- Provides information to industry participants that cannot afford to purchase data, including small pork processing operations, small

[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.

wholesalers and retailers, and direct and niche marketing operations.

Summary of Costs. The regulatory objective of this 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 rule was developed in the most cost-effective manner possible, and, to the extent practicable, draws 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 recordkeeping 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 estimated that the creation of this interface by in-house computer personnel will require an industry average of 15 hours per respondent. Further, we estimated 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 estimated 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 the 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
Total Annual Submission Costs	56	....	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 final 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; $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.

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

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	$5,000,277.52
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 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 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 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 final 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 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 this regulation.

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 recordkeeping 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 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 federally inspected swine 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 illustrate 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 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 rule. The OMB reference number assigned to this collection is 0581–0279. AMS plans 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 reporting requirement timeline is fully discussed under Supplementary Information.

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 recordkeeping systems and business operation practices and conduct their operations in a similar manner. AMS believes that all of the information required under this 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 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 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 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 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		Number 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.

List of Subjects in 7 CFR Part 59

Cattle, Hogs, Sheep, Livestock, Lamb.

For the reasons set forth in the preamble, Title 7, Chapter I, part 59 is amended 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 Recordkeeping.

* * * * *

(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 10:00 a.m. central time;

(2) Between 10:00 a.m. and 2:00 p.m. central time; or

(3) After 2:00 p.m. central time.

■ 3. Section 59.30 is amended by:

■ A. Revising the definition of ''F.O.B.''.

■ B. Revising the last two sentences in the definition of ''Institutional Meat Purchase Specifications''.

■ C. Revising paragraph (3) of the definition of ''Lot''.

The revisions read as follows:

§ 59.30 Definitions.

* * * * *

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).

Institutional Meat Purchase Specifications. * * * 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.*

* * * * *

Lot. * * *

(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.

* * * * *

■ 4. Section 59.200 is amended by:

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

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

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

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

■ E. Adding, in alphabetical order, a definition for ''Specialty pork product''.

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

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

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

The additions read as follows:

§ 59.200 Definitions.

* * * * *

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

* * * * *

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.

* * * * *

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.

* * * * *

Pork class. The term ''pork class'' means the following types of swine purchased for slaughter:

(1) Barrow/gilt;

(2) Sow;

(3) Boar.

* * * * *

Specialty pork product. The term 'specialty pork product' means wholesale pork produced and marketed under any specialty program such as, but not limited to, genetically-selected pork, certified programs, or specialty selection programs for quality or breed characteristics.

* * * * *

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

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.

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.

■ 5. Adding a new § 59.205 to read 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: August 15, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

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

Appendix A—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—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 is due to be submitted (mm/dd/yyyy),and reporting time (the submission time corresponding to the 10:00 a.m. and the 2:00 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 overseas; 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

FORM APPROVED. - OMB NO. 0581-0279

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

WHOLESALE PORK DAILY REPORT

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	
11. LOT IDENTIFICATION	
12. DESTINATION (1 = Domestic; 2 = Export/Overseas; 3 = NAFTA)	
13. SALES TYPE CODE	
14. DELIVERY PERIOD CODE	
15. REFRIGERATION	
16. CLASS CODE	

DELIVERY PERIOD CODE	CLASS CODE	REFRIGERATION CODE
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	1 =BARROW/GILTS 2 = SOW 3 = BOAR 4 = MIXED BAR/GLT/SOW/BOAR	1 = 0-6 FRESH, COMBO 2 = 7+ FRESH, COMBO 3 = 0-10 FRESH, BOXED 4 = 11+ FRESH, BOXED 5 = FROZEN

SALES TYPE CODE
1 = NEGOTIATED SALE 2 = FORWARD SALE 3 = FORMULA MARKETING ARRANGEMENT

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-NEW. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.
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17. PORK ITEM PRODUCT CODE	
18. PORK ITEM - Description	
19. TOTAL PRODUCT WEIGHT	
20. FOB PLANT PRICE ($/CWT)	
21. FOB OMAHA PRICE ($/CW	

LS-89

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