

**Supporting Statement
Swine Contract Library
OMB Comment Number 0580-0021**

This proposed rulemaking would re-establish the regulatory authority for the library's continued operation and incorporate certain changes contained within the Livestock Mandatory Reporting Reauthorization Act (P.L. 109-296) (Reauthorization Act) that impact the Swine Contract Library, as well as make other changes to enhance the library's overall effectiveness and efficiency in response to input from regulated entities and the public.

Justification

1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirement that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.*

The Swine Packer Marketing Contracts subtitle of the Livestock Mandatory Reporting Act of 1999 (LMRA) amended the Packers and Stockyards (P&S) Act to mandate the establishment of a library of swine packer marketing contracts (swine contract library), and a monthly report of types of contracts in existence and available and commitments under such contracts. Information is required from packers for processing plants that meet certain criteria, including size as measured by annual slaughter. The USDA Grain Inspection, Packer and Stockyards Administration (GIPSA) is responsible for implementing and enforcing the P&S Act, including the swine contract library. GIPSA issued regulations to address the implementation and requirements for the swine contract library. A copy of relevant sections of the P&S Act and regulations are attached.

The collection of information is necessary for GIPSA to perform the functions required for the mandatory reporting of swine packer marketing contract information.

2. *Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.*

The information collection and recordkeeping requirements for the swine contract library are essential for maintaining a mandatory library of information on contracts used by packers to purchase swine from producers and monthly reports of commitments under such contracts. Producers can use the information from the library to seek out better contract terms and compare carcass merit program terms. Knowing that specific contract terms are available in the marketplace, producers have the ability to seek out the packers that offer terms that the producers prefer. Since the first contract summary reports were posted in January 2003, the reports have received an average of four hits per day. We've

received a few phone calls from producers, attorney's representing producers, and management specialists indicating they are looking at the summaries for this information. Most state they would like to see the contracts as a whole because they would find that more useful. (NOTE: As we explained in the initial rulemaking, confidentiality protections in the LMRA prevent disclosing contracts as a whole.)

The information from the monthly report on the number of swine contracted for future delivery can aid producers in deciding how many sows to breed and deciding whether to search out packers in regions where smaller numbers of swine are known to be contracted for delivery. Since the first monthly summary reports were posted in January 2003, the reports have received an average of two hits per day. Form P&SP-341 is used to collect the monthly information.

Appropriate procedures will be developed and implemented for verification and audit of the estimates submitted by responding packers. Monthly reports are checked for reasonableness as they are submitted. The estimates are compared to the previous month's estimates and previous year's estimates. An internal monitoring program has been instituted by GIPSA to look at long term trends in individual plant estimates in comparison to actual slaughter numbers available from packer annual reports.

Summary information on the submitted contracts and monthly reports is published on GIPSA's web site and available in the agency's offices in Des Moines, Iowa; Atlanta, Georgia; Denver, Colorado; and Washington D.C. and other USDA offices with a presence at the local level. The aggregated estimates are published in a monthly report on GIPSA's web site and also are available in the Des Moines, Iowa, regional office.

Example Contracts

The first information collection requirement consists of submitting example contracts. Packers are required to submit identifying information for each example contract with newly required form P&SP-342, which replaces the optional coversheet previously available. The form provides information necessary to process the example contract for multiple plants when applicable. Previously, packers were required to submit a separate example contract for each plant at which the contract was offered.

Packers must notify GIPSA when a previously submitted example contract expires or the offer is withdrawn by submitting Form P&SP-342 indicating which example contract no longer represents any existing or offered contract.

We provide guidelines for selecting example contracts that include an optional documentation sheet for verbal contracts (Form P&SP-343).

Initially, a packer submits example contracts currently in effect or available at any swine processing plant that is subject to the regulations. Subsequently, a packer submits example contracts for any offered, new, or amended contracts that varied from previously submitted contracts in the base price determination, the application of a ledger or accrual

account, carcass merit premium and discount schedules (including the determination of the lean percent or other merits of the carcass that are used to determine the amount of the premiums and discounts and how those premiums and discounts are applied), or the use and amount of noncarcass merit premiums or discounts. The initial submission of example contracts requires more time than subsequent filings of new contracts or changes, as packers initially need to review all their contracts to identify the unique types that need to be represented by an example submitted to GIPSA. Thereafter, subsequent filings require a minimal amount of effort on the part of packers, as only example contracts that represented a new type need to be filed with GIPSA.

Monthly Report

Packers are required to submit data in the format specified by form P&SP-341, to meet the requirements for monthly reporting of existing and available contracts and commitments under contract for each swine processing plant that is subject to the regulations. We have reduced P&SP-341 from three pages to one page. The information requested has not changed. Duplication of information requested on each page of the form has been eliminated.

Form P&SP-343

This form is optional and not required for reporting verbal contracts; however, it is currently used by 10 packers. It can be used to document a basic set of contract terms for verbal contracts.

Annual Waiver Request

The waiver request must be submitted in writing and include a statement that the packer does not procure swine using marketing agreements. The packer must send the waiver request to the GIPSA regional office in Des Moines, Iowa. If the waiver request is approved, GIPSA will inform the packer in writing that it has been granted a waiver for 12 months following the date of receipt of the waiver request unless the status of the packer changes during that year. The packer will be notified to submit the information required in this part if it begins using marketing agreements during the waiver period or if GIPSA determines that the packer utilizes marketing agreements.

The required information is kept and maintained as a matter of normal business practice by the respondents, normally in electronic recordkeeping systems. Electronic submission minimizes the cost burden to packers. GIPSA implemented a secure system to allow packers to submit data via the Internet through the GIPSA web site.

As an alternative, respondents can access a GIPSA maintained web site where the form is available for respondents to print off. Once the information has been entered, the form will be submitted to GIPSA via mail or electronic data transmission.

GIPSA enters the data into the GIPSA database system for processing, aggregation, and releases a monthly public report of types of contracts in existence and available, and commitments under existing contracts.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.*

Respondents can access a GIPSA maintained web site where the form is available for respondents to print off or complete on-line. Once the information has been entered, the form can be submitted to GIPSA via mail or electronic data transmission. When submitting online with a secure login, a number of fields identifying the packer are automatically filled in by our system. Any packers that maintain contracts electronically will be able to transmit copies via electronic data transmission.

GIPSA enters the data into the GIPSA database system for processing and aggregation, then releases a public report of types of contracts in existence and available. The swine contract library web site and databases electronically collect information, summarize it, and make reports available to the public.

GIPSA encourages collection through electronic means to the maximum extent possible, but allows other methods of reporting. GIPSA provides access to form P&SP-341, P&SP-342 and optional documentation sheet for verbal contracts on the Internet where respondents may access them for downloading or electronic data transmission.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.*

The information to be obtained is not available from other sources, nor is any similar information available from any sources within government or from non-government sources.

To reduce duplicate submission for multi-plant packers, P&SP-342 now allows the submission of one example contract for multiple plants.

- 5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.*

GIPSA requires the least amount of collection and reporting effort to comply with the statutory mandates. The form for the monthly report is designed to minimize burden to the fullest extent possible, and electronic methods are utilized to the maximum extent

practical. The form was redesigned to reduce its length from three pages to one page. Duplicate information requested on pages two and three has been eliminated.

GIPSA has implemented a procedure for obtaining a waiver of the requirement to submit monthly reports. Packers who do not use marketing agreements to procure hogs may file a waiver request annually. Approximately 25 percent of packers currently subject to the SCL regulations have reported that they do not use marketing contracts and have reported the estimates of swine to be delivered under contract as zero each month.

Packers slaughtering swine at packing plants of a certain size must report information to the Secretary at prescribed times throughout the year. Many small businesses are exempt due to annual slaughter capacity thresholds. Based on figures published by the National Agricultural Statistics Service (NASS), there were 618 Federally inspected swine slaughter plants operating in the U.S. at the end of 2008. GIPSA estimates that there are currently 35 packers that are required to report contract information for 55 plants (only 8 percent of all Federally inspected swine plants). Therefore, fully 92 percent of all swine plants are not required to report.

Based on Small Business Administration size standards, GIPSA estimates that approximately 15 of the packers that own plants that would be required to report, are considered small businesses.

6. *Describe the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

The information collection is mandated by the Swine Packer Marketing Contracts, Subtitle B of the P&S Act (7 U.S.C. 198, 198a, and 198b). Specifically, the P&S Act, as amended, mandates the amount and frequency of the information collection. While the options to not collect or to collect less frequently are specifically ruled out by the P&S Act, GIPSA requires the least amount of collection and reporting effort to comply with the statutory mandates. Monthly release of information is required by statute, so monthly collection is necessary to meet that requirement.

7. *Explain any special circumstances that would cause an information collection to be conducted in a manner:*
 - *Requiring respondents to report information to the agency more often than quarterly*

Respondents need to submit form P&SP-341 monthly to meet the statutory requirement for monthly release of information.

- *Requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

The Swine Packer Marketing Contracts, Subtitle B of the P&S Act (7 U.S.C. 198, 198a, and 198b) directs the collection of information on swine packer marketing contracts and commitments of swine for delivery under such contracts. Therefore, information collection is being carried out as mandated. GIPSA routinely collects proprietary data as part of its ongoing regulatory oversight responsibilities, and has demonstrated that existing policies and procedures are adequate to protect the confidentiality.

Circumstances will NOT cause this information to be conducted in a manner:

- Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- Requiring respondents to submit more than an original and two copies of any document;
- Requiring respondents to retain records, other than health, medical, governmental contract, grant-in-aid, or tax records, for more than 3 years;
- In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of the study;
- Requiring the use of a statistical data classification that has not been reviewed and approved by OMB; or
- That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use.

There are no other special circumstances. The collection information is conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

8. *If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.*

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping,

disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The 60-day notice soliciting comments on the proposed rule and information collection is imbedded in the proposed rule.

The volume and frequency of information collected is set by the Livestock Mandatory Reporting Act of 1999 and subsequent reauthorizations.

Regular consultation with respondents regarding the effectiveness of the collection process has shown that available options for submission are adequate. Use of the electronic submission option has steadily increased over the previous 3 years.

9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

No payment or gifts are provided to respondents.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

Records and reports received from firms and individuals subject to the P&S Act are held confidential by GIPSA. The swine contract library is subject to the confidentiality protections added as new Section 251 to the Agricultural Marketing Act by the Livestock Mandatory Reporting Act of 1999.

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.*

Questions of a sensitive nature are not included on these forms.

12. *Provide estimates of the hour burden of the collection of information. The statement should:*

- *Indicate the number of respondents, frequency of response, annual hour burden, and an explanation how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.*
- *If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.*
- *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, the cost should be included in Item 13.*

Methodology Used for Calculating Estimates

Burden hours were estimated using program area expertise within GIPSA to provide the best estimate of time required to maintain records, complete forms, and submit required information. Estimates are based on GIPSA'S experience reviewing swine contracts in the normal course of enforcing the P&S Act and in working with data, similar in type and complexity to that to be reported, during the course of numerous investigations conducted by GIPSA. The cost was estimated by multiplying estimated total number of burden hours times and hourly wage rate of \$60 per hour for activities involving development of electronic information systems, and \$25 per hour for all other activities.

GIPSA provides the option to submit example contracts and monthly reports electronically; however, GIPSA does not require electronic methods. Approximately 7 percent of packers submit example contracts on-line and 90 percent submit monthly reports on-line. GIPSA does not anticipate many packers will choose to submit example contracts electronically. We estimated all costs for submitting example contracts manually. We estimated costs with 90 percent of packers submitting monthly reports electronically and the remaining 10 percent submitting monthly reports manually.

Based on our experiences with the packers and the plants for which information is required for the swine contract library, we estimate one new plant per year will be required to begin submitting information. From the initial 35 firms operating 55 plants, 2 firms operating 1 plant each have ceased business, 2 plants operated by different firms have fallen below the reporting threshold, and 2 plants operated by different firms have ceased slaughtering but continue to operate as processing facilities. Two firms operating one plant each have increased slaughter levels above the reporting

threshold and two firms have built new plants that slaughter or expect to slaughter above the threshold level. One firm utilizing custom slaughter facilities has increased slaughter above the threshold level.

Cost burden calculations exclude reduced burden due to waiver for monthly reports. The estimated number of plants eligible for the waiver is 25 percent of 55, for a total of 13 plants, most of whom are single plant packers. Currently, 50 percent of the packers (5 plants) filing the monthly report manually would be eligible for the waiver. Of the 120 estimated hours spent for manual submission of monthly reports, the waiver could eliminate 60 hours for a savings of \$1,500. The remaining eight plants are assumed to file electronically. The waiver would save 96 hours and \$2,400. The waiver process estimated to take 0.25 hours (15 minutes) to complete at a cost of \$25/hour for a cost per waiver of \$6.25. Total cost to the industry for submitting waivers is estimated at \$81.25. The implementation of a waiver will provide a net savings of \$3,818.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14.)

- The cost estimate should be split into two components (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment, and record storage facilities.
- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

Most packers that are required to respond to this information collection have systems in existence for recordkeeping related to the collection of information. Most packers use those existing electronic information systems to accomplish the collection of information. No new respondent will be required to incur capital costs, such as purchase of additional technology or services, or any start-up costs other than those included in the hour burden described in Item 12.

Firms that use existing electronic systems for maintaining records, compiling data for the monthly report, or submitting the monthly report likely would incur additional costs for storing the data or reports. This extra cost would consist of the cost of a sufficient number of compact discs or equivalent storage media for storing the data and reports. We estimate this cost would be negligible, averaging less than \$25 per year per new plant for a total of \$25 (25/plant x 1 new plant per year).

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

GIPSA estimates the Agency will incur total costs of \$355,000 per year for all activities associated with maintaining the swine contract library. Necessary activities include monitoring and reviewing to assure completeness, consistency, and accuracy, both in the submitted contracts and the monthly reports. Also, we conduct ongoing analyses of the data and information obtained from packers, and explore ways to increase the usefulness of the data and information. Our projected costs include costs such as communication costs, travel expense for plant visits for monitoring, training, office supplies, computer hardware and software acquisition and maintenance, and two full time equivalent staff years. The staff years are used for the activities described below, described in terms of individual staff year equivalents. While salary costs have increased, the quantities of supplies, travel and equipment repair or replacement have stayed the same.

Three-quarters of a staff year equivalent is required to deal primarily with activities associated with example contracts filed for the contract library. This activity involves receiving, reviewing, and analyzing contracts to distill information for our web site on the Internet and related GIPSA recordkeeping. This activity also includes answering questions from packers and from users of our web site on the Internet. Finally, this area of responsibility includes involvement in compliance issues such as investigations, plant visits, and correspondence with packers.

One-quarter of a staff year equivalent is required to deal primarily with monthly reports. This involves receiving monthly reports, assuring that all reports were complete and filed in a timely manner, entering data from the reports into GIPSA's system, performing verification of the data, and aggregating the data into the monthly report. This activity

also includes monitoring, oversight, and compliance responsibilities similar to those described above for the contract library.

One-half of a staff year equivalent is required for automated information systems development and operation related to both the contract library and the monthly report. For the contract library, this entails continually updating and maintaining the contract library homepage on the Internet. The activity also includes supporting the systems used for aggregating and otherwise processing the data included in the monthly reports filed by packers, and posting the public report on our homepage on the Internet.

The final one-half of a staff year equivalent involves a composite group of activities that are performed by various people. These activities include management oversight responsibility for the entire program, such as reviewing the output for consistency with program objectives, making management decisions on compliance issues, and working with the Office of General Counsel on compliance issues. Additional activities involve analysis of the data on the monthly reports to determine ways to improve the quality of reporting process and the usefulness of the information released to the public.

Staff	=	\$230,000
Travel Expenses	=	25,000
Supplies & Materials	=	40,000
Equipment	=	<u>60,000</u>
Total	=	\$355,000

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

Discretionary Changes

Burden increase from records keeping: Record keeping burden was previously considered negligible because the records needed are kept in the regular course of business. This is still true; however record keeping burden was included in these estimates. Record keeping burden adds 542.75 hours to the total.

Burden increase from new form PSP-342: There is no change in burden from the newly required form PSP-342. Respondents were previously required to provide the information, but not in a specified format. The estimate burden of completing the new form is the same as the previously estimate burden of providing the information.

Burden increase from optional form PSP-343: Current burden estimates include 1.5 industry hours for completing optional form PSP-343. Previously, these hours were considered included in the time needed to submit example contracts.

Burden from waiver: The agency proposes allowing a waiver for entities which do not use marketing contracts. The burden for submitting the waiver is estimated at 3.25 hours.

Cost burden calculations exclude reduced burden due to waiver for monthly reports. The estimated number of plants eligible for the waiver is 25 percent of 55, for a total of 13 plants, most of whom are single plant packers. Currently, 50 percent of the packers (5 plants) filing the monthly report manually would be eligible for the waiver. Of the 120 estimated hours spent for manual submission of monthly reports, the waiver could eliminate 60 hours for a savings of \$1,500. The remaining eight plants are assumed to file electronically. The waiver would save 96 hours and \$2,400. The waiver process estimated to take 0.25 hours (15 minutes) to complete at a cost of \$25/hour for a cost per waiver of \$6.25. Total cost to the industry for submitting waivers is estimated at \$81.25. The implementation of a waiver will provide a net savings of \$3,818.

Burden decrease from multiple plant contract submissions: On the newly mandatory form PSP-342, a packer may submit a single example contract for multiple plants. However, the burden estimates were calculated assuming separate submission of each example contract for each plant.

Burden decrease from increased use of electronic submission: Use of electronic submission for form PSP-341 has increased from 67 percent to 90 percent. This equates to 130 fewer industry burden hours per year.

Statutory Changes

Burden increase from definition change: The change in definition of packer increases the number of firms required to respond by one. The estimated burden for this additional subject firm is included as an initial filing with a report burden of 5.5 hours and a record keeping burden of 5.5 hours.

Burden increase from industry growth: Previously, burden estimates included responses from 32 firms operating 53 plants. Current information estimates 33 firms operating 55 plants are subject to the regulation. This increase in entities adds 28 hours to the industry burden estimate.

16. For collection of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

Summary information on contracts and monthly reports are published on GIPSA's web site and are available in the agency's regional offices in Des Moines, Iowa; Atlanta, Georgia; Denver, Colorado; and Washington, D.C. and other USDA offices with a presence at the local level. These summaries are aggregated by type of contract and by region to avoid disclosure of confidential firm information. The aggregated estimates are published in a monthly report on GIPSA's web site and are also available in the agency's regional office in Des Moines, Iowa.

Initially, the portion of the legislation mandating the implementation of the swine contract library terminated 5 years from the date the requirement became effective (5 year expiration date: October 22, 2004). Congress reauthorized the livestock mandatory reporting act, which includes the swine contract library, for 1 year until September 30, 2005 and again for 5 years until September 30, 2010.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

GIPSA is not seeking approval to not display the expiration date for OMB approval of the information collection.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

No exceptions are requested to the certification statement identified in Item 19 of OMB 83-I.

B. Collections of Information Employing Statistical Methods.

The Agency should be prepared to justify its decision not to use statistical methods in any case where such methods might reduce burden or improve accuracy of results. If the information collection employs statistical methods, check "Yes" for Item 17 on the Form OMB 83-I and complete this section of the Supporting Statement.

This information collection does not employ statistical methods.