

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### 9 CFR Part 206

RIN 0580-AB06

#### Swine Contract Library

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** On August 11, 2003, the Grain Inspection, Packers and Stockyards Administration (GIPSA) implemented new Subtitle B of Title II of the Packers and Stockyards Act, which was added by the Livestock Mandatory Reporting Act of 1999 (1999 Act) by establishing the Swine Contract Library (SCL). The statutory authority for the library lapsed on September 30, 2005. On October 5, 2006, the Livestock Mandatory Reporting Reauthorization Act (Reauthorization Act) reauthorized the 1999 Act until September 30, 2010, and also amended the swine reporting requirements of the 1999 Act. This final rule re-establishes the regulatory authority for the SCL's continued operation and incorporates certain changes contained within the Reauthorization Act that impact the SCL, as well as makes other changes to enhance the SCL's overall effectiveness and efficiency in response to input from regulated entities and the public.

**DATES:** *Effective Date:* May 3, 2010.

**FOR FURTHER INFORMATION CONTACT:** S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720-7363, [s.brett.offutt@usda.gov](mailto:s.brett.offutt@usda.gov).

#### SUPPLEMENTARY INFORMATION:

### Background

GIPSA is responsible for the enforcement of the Packers and Stockyards Act of 1921, as amended and supplemented, (7 U.S.C. 181 *et seq.*) (P&S Act). Under authority delegated to GIPSA by the Secretary of Agriculture (Secretary) in section 407(a) of the P&S Act (7 U.S.C. 228), we are authorized to create regulations necessary to carry out the provisions of the P&S Act.

The 1999 Act (Pub. L. 106-78) amended Title II of the P&S Act to include Subtitle B—Swine Packer Marketing Contracts. The 1999 Act mandated the creation and maintenance of a library of marketing contracts offered by certain packers to producers for the purchase of swine. To implement this legislation, GIPSA established the SCL and promulgated SCL regulations (9 CFR Part 206) requiring that packers, as defined in Subtitle B of Title II of the P&S Act, file example marketing contracts with GIPSA along with monthly estimates of the number of swine to be delivered under contract. GIPSA compiles this information and makes summary reports available to the public.

On October 22, 2004, the 1999 Act expired and was not reauthorized until December 3, 2004 (Pub. L. 108-444). Authority for the 1999 Act was extended, however, to September 30, 2005. The 1999 Act lapsed again in 2005 and was reauthorized and amended on October 5, 2006, when the Reauthorization Act (Pub. L. 109-296) was signed into law. The 1999 Act is scheduled to once again expire on September 30, 2010.

When the 1999 Act expired in October 2004, GIPSA asked swine packers to continue to comply with the SCL regulations voluntarily. With the information submitted voluntarily by packers, GIPSA continued to make summary reports available to the public.

### Notice of Proposed Rulemaking and Final Action

GIPSA published a Notice of Proposed Rulemaking in the **Federal Register** on October 26, 2009 (74 FR 54928), inviting interested parties to comment on the re-authorization of the SCL regulations. GIPSA received no comments on the proposed rule during the comment period that ended on December 28, 2009. Accordingly, GIPSA

is publishing the final rule as it was proposed.

This final rule re-establishes authority for the SCL regulations (9 CFR Part 206) by amending the regulations' authority citation to include Subtitle B of Title II of the P&S Act (7 U.S.C. 198-198b). In addition to amending the SCL regulations to make them consistent with the Reauthorization Act, we are also amending the SCL regulations to incorporate suggestions received from the public and regulated entities. Specifically, we are doing the following:

(1) Revising the definition of "packer" to be consistent with the Reauthorization Act;

(2) Revising the definitions of several contract types;

(3) Adding definitions of terms used in several contract types to describe the market price that is being paid for swine;

(4) Adding a new requirement that an example contract submission, a notification of contract expiration, and a notification of a contract withdrawal include a standard cover sheet; and

(5) Adding a waiver for packers that do not utilize marketing contracts.

The purpose of these amendments is to make the information collected more uniform and more useful, while reducing the burden on the reporting entities.

### Options Considered

We considered asking packers to continue to voluntarily comply with regulations that are not enforceable and are no longer consistent with the authorizing legislation. Since that is not a viable option, we have no alternative but to revise the SCL regulations to carry out provisions of the P&S Act.

In addition, we considered not waiving the requirement that packers that do not purchase swine under contract report information to GIPSA for the SCL. We also considered a waiver of longer than 1 year, but did not wish to provide such a blanket waiver since business conditions change over time. Packers with a waiver that commence purchasing swine under marketing contracts will now be required to begin filing contracts on the first business day of the following month as described in § 206.2, and commence submitting monthly reports as required by § 206.3 of the regulations.

### Effects on Regulated Entities

Under this final rule, the reporting burden for most packers will remain about the same or be slightly less than the reporting burden for the expired SCL regulations. Swine packers will have to comply with regulations that they have complied with in the past. We anticipate that 35 swine packers that operate or have swine slaughtered at 55 plants will be required to comply with the SCL regulations. This represents only 8.5 percent of all federally inspected swine plants; the others do not meet the size and capacity definition of “packer” for the purpose of this final rule. Nearly half of the 35 swine packers now comply with the SCL requirements voluntarily. Three of the entities that will be subject to this proposed rule are new respondents, and their anticipated burden is under 4 hours to initiate the reporting process. For the 32 remaining swine packers, the expected burden is .25 hours per packing plant to submit an example of each new or amended contract to GIPSA.

The change in the definition of the term “packer” will require reporting by one additional firm. That firm otherwise does not meet the previous size and capacity definition of “packer.”

This final rule will benefit swine producers by increasing their knowledge about contract terms and the number of swine under contract, improve market transparency, and gives swine producers the ability to make more informed marketing decisions. GIPSA believes that market transparency facilitates market efficiency by reducing price information search costs for market participants. Availability of market information also contributes to considerations of equity and fairness in the marketplace.

### Executive Order 12866 and Regulatory Flexibility Act

The Office of Management and Budget (OMB) has designated this final rule as not significant for the purposes of Executive Order 12866.

We have determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule will apply to approximately 35 packers operating at 55 plants. This represents only 8.5 percent of all federally inspected swine plants; the others are too small to meet the size and capacity definition of the term “packer” for the purpose of this proposed rule. Of those 35 packers, 18 have fewer than 500 employees and will

therefore meet the applicable size standard for small entities in the Small Business Administration (SBA) regulations (13 CFR 121.201). For the North American Industry Classification System (NAICS) code 311611 “Animal (except poultry) Slaughtering,” the SBA size standard is 500 employees. However, the firms to which this final rule applies are the largest of the firms in this industry that meet the size standard for small businesses. We estimate that eight of those 18 small entities will be eligible for an annual waiver, thus reducing the required reporting burden on those entities from 12 monthly reports to one annual waiver request. For the remaining 10 small entities that are not eligible for a waiver, the requirement to submit marketing contracts to GIPSA is estimated at .25 hours (15 minutes) per contract. The monthly report is estimated to average 2 hours per report when prepared and submitted by mail or facsimile, and 1 hour per report when prepared and submitted electronically, which does not represent a significant economic burden or impact.

The change in the definition of the term “packer” will require reporting by one additional firm that does not otherwise meet the previous size and capacity definition of “packer.”

This final rule requires that swine packers submit certain information to GIPSA. It does not impose any restrictions on the form, timing, or location of contracts in which regulated entities may engage. It places no additional burden or limit on current or future business relationships into which affected firms may enter.

### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. These actions are not intended to have retroactive effect. This final rule will not pre-empt state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. In addition, the 1999 Act, as amended, does not restrict or modify the authority of the Secretary to administer or enforce the P&S Act, as amended. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this information collection package (#0580–0021) was approved by OMB on March 7, 2010, and expires on March 31, 2013.

### E-Government Act Compliance

GIPSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### List of Subjects in 9 CFR Part 206

Swine, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, we are amending 9 CFR Chapter II as follows:

■ 1. Revise Part 206 to read as follows:

### PART 206—SWINE CONTRACT LIBRARY

Sec.

206.1 Definitions.

206.2 Swine contract library.

206.3 Monthly report.

**Authority:** 7 U.S.C. 198–198b; 7 U.S.C. 222.

#### § 206.1 Definitions.

The definitions in this section apply to the regulations in this part. The definitions in this section do not apply to other regulations issued under the Packers and Stockyards Act (P&S Act) or to the P&S Act as a whole.

**Accrual account.** (Synonymous with the term “ledger,” as defined in this section.) An account held by a packer on behalf of a producer that accrues a running positive or negative balance as a result of a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid. Credits and/or debits for amounts beyond these minimum and/or maximum levels are entered into the account. Further, the contract specifies how the balance in the account affects producer and packer rights and obligations under the contract.

**Base price.** The price paid for swine before the application of any premiums or discounts, expressed in dollars per unit.

**Boar.** A sexually-intact male swine.

**Ceiling price.** The maximum market price that will be paid for swine. Adjustments may be made to the base price if the market price rises above this price.

**Contract.** Any agreement, whether written or verbal, between a packer and a producer for the purchase of swine for slaughter, except a negotiated purchase (as defined in this section).

**Contract type.** The classification of contracts or risk management agreements for the purchase of swine committed to a packer, by the determination of the base price and the

presence or absence of an accrual account or ledger (as defined in this section). The contract type categories are:

- (1) Swine or pork market formula purchases with a ledger,
- (2) Swine or pork market formula purchases without a ledger,
- (3) Other market formula purchases with a ledger,
- (4) Other market formula purchases without a ledger,
- (5) Other purchase arrangements with a ledger, and
- (6) Other purchase arrangements without a ledger.

**Floor price.** The minimum market price that will be paid for swine. Adjustments may be made to the base price if the market price falls below this price.

**Formula price.** A price determined by a mathematical formula under which the price established for a specified market serves as the basis for the formula.

**Ledger.** (Synonymous with “accrual account,” as defined in this section.) An account held by a packer on behalf of a producer that accrues a running positive or negative balance as a result of a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid. Credits and/or debits for amounts beyond these minimum and/or maximum levels are entered into the account. Further, the contract specifies how the balance in the account affects producer and packer rights and obligations under the contract.

**Negotiated purchase.** A purchase, commonly known as a “cash” or “spot market” purchase, of swine by a packer from a producer under which:

- (1) The buyer-seller interaction that results in the transaction and the agreement on actual base price occur on the same day; and
- (2) The swine are scheduled for delivery to the packer not later than 14 days after the date on which the swine are committed to the packer.

**Noncarcass merit premium or discount.** An increase or decrease in the price for the purchase of swine made available by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium or discount is known before the purchase and delivery of the swine.

**Other market formula purchase.** A purchase of swine by a packer in which the pricing determination is a formula price based on any market other than the markets for swine, pork, or a pork product. This includes a formula purchase where the price formula is

based on one or more futures or options contracts.

**Other purchase arrangement.** A purchase of swine by a packer that is not a negotiated purchase, swine or pork market formula purchase, or other market formula purchase, and does not involve packer-owned swine. This contract type includes long term contract agreements, fixed price contracts, cost of production formulas, and formula purchases with a floor, window or ceiling price.

**Packer.** Any person engaged in the business of buying swine in commerce for 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. The regulations in this part apply only to a packer that meets the conditions in either paragraph (1) or (2) of this definition:

(1) A packer purchasing at least 100,000 swine per year and slaughtering swine at one or more federally inspected processing plants that meet either of the following conditions:

(i) A swine processing plant that slaughtered an average of at least 100,000 head of swine per year during the immediately preceding 5 calendar years, with the average based on those periods in which the plant slaughtered swine; or

(ii) A swine processing plant that did not slaughter swine during the immediately preceding 5 calendar years that has the capacity to slaughter at least 100,000 swine per year, based on plant capacity information.

(2) Any packer purchasing an average of at least 200,000 sows, boars, or any combination thereof, per year and slaughtering at least 200,000 sows, boars, or any combination thereof at one or more federally inspected processing plants during the immediately preceding 5 calendar years, with the average based on those periods in which the plant slaughtered swine.

**Producer.** Any person engaged, either directly or through an intermediary, in the business of selling swine to a packer for slaughter (including the sale of swine from a packer to another packer).

**Sow.** An adult female swine that has produced one or more litters.

**Swine.** A porcine animal raised to be a feeder pig, raised for seedstock, or raised for slaughter.

**Swine or pork market formula purchase.** A purchase of swine by a packer in which the pricing mechanism is a formula price based on a market for

swine, pork, or pork product, other than any formula purchase with a floor, window or ceiling price, or a futures or option contract for swine, pork, or a pork product.

**Window price.** The range of market prices that will be paid for swine. Adjustments may be made to the base price if the market prices fall outside this range. The window price contains both the floor and ceiling prices.

## **§ 206.2 Swine contract library.**

(a) *Do I need to provide swine contract information?* Each packer, as defined in § 206.1, must provide information for each swine processing plant that it operates or at which it has swine slaughtered that has the slaughtering capacity, alone or in combination with other plants, specified in the definition of packer in § 206.1.

(b) *What existing or available contracts do I need to provide and when are they due?* Each packer must send, to the Grain Inspection, Packers and Stockyards Administration (GIPSA), an example of each contract it currently has with a producer or producers or that is currently available at each plant that it operates or at which it has swine slaughtered that meets the definition of packer in § 206.1. This initial submission of example contracts is due to GIPSA on the first business day of the month following the determination that the plant has the slaughtering capacity, alone or in combination with other plants, specified in the definition of packer in § 206.1.

(c) *What available contracts do I need to provide and when are they due?* After the initial submission, each packer must send GIPSA an example of each new contract it makes available to a producer or producers within 1 business day of the contract being made available at each plant that it operates or at which it has swine slaughtered that meets the definition of packer in § 206.1.

(d) *What criteria do I use to select example contracts?* For purposes of distinguishing among contracts to determine which contracts may be represented by a single example, contracts will be considered to be the same if they are identical with respect to all of the following four example-contract criteria:

(1) Base price or determination of base price;

(2) Application of a ledger or accrual account (including the terms and conditions of the ledger or accrual account provision);

(3) 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); and

(4) Use and amount of noncarcass merit premiums and discounts.

(e) *Where and how do I send my contracts?* Each packer may submit the example contracts, notifications required by this section, and Form P&SP 342, Contract Submission Cover Sheet, by either of the following two methods:

(1) *Electronic report.* Example contracts and notifications required by this section may be submitted by electronic means. Electronic submission may be by any form of electronic transmission that has been determined to be acceptable to the Administrator. To obtain current options for acceptable methods to submit example contracts electronically, contact GIPSA through the Internet on the GIPSA Web site (<http://www.gipsa.usda.gov>) or at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309.

(2) *Printed report.* Each packer that chooses to submit printed example contracts and notifications must deliver the printed contracts and notifications to USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309.

(f) *What information from the swine contract library will be made available to the public?* GIPSA will summarize the information it has received on contract terms, including, but not limited to, base price determination and the schedules of premiums or discounts. GIPSA will make the information available by region and contract type, as defined in § 206.1, for public release 1 month after the initial submission of contracts. Geographic regions will be defined in such a manner to provide as much information as possible while maintaining confidentiality in accordance with section 251 of the Agricultural Marketing Act (7 U.S.C. 1636).

(g) *How can I review information from the swine contract library?* The information will be available on the Internet on the GIPSA Web site (<http://www.gipsa.usda.gov>) and at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309. The information will be updated as GIPSA receives information from packers.

(h) *What do I need to do when a previously submitted example contract is no longer a valid example due to contract changes, expiration, or withdrawal?* Each packer must submit a new example contract when contract changes result in changes to any of the four example-contract criteria specified in paragraph (d) of this section and notify GIPSA if the new example

contract replaces the previously submitted example contract. Each packer must notify GIPSA when an example contract no longer represents any existing or available contract (expired or withdrawn). Each packer must submit these example contracts and notifications within 1 business day of the change, expiration, or withdrawal.

#### § 206.3 Monthly report.

(a) *Do I need to provide monthly reports?* Each packer, as defined in § 206.1, must provide information for each swine processing plant that it operates or at which it has swine slaughtered that has the slaughtering capacity, alone or in combination with other plants, specified in the definition of packer.

(b) *When is the monthly report due?* Each packer must send a separate monthly report for each plant that has the slaughtering capacity, alone or in combination with other plants specified in the definition of packer in § 206.1. Each packer must deliver the report to the GIPSA Regional Office in Des Moines, Iowa, by the close of business on the 15th of each month, beginning at least 45 days after the initial submission of example contracts. If the 15th day of a month falls on a Saturday, Sunday, or federal holiday, the monthly report is due no later than the close of the next business day following the 15th.

(c) *What information do I need to provide in the monthly report?* The monthly report that each packer files must be reported on Form P&SP-341, which will be available on the Internet on the GIPSA Web site (<http://www.gipsa.usda.gov>) and at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309. In the monthly report, each packer must provide the following information:

(1) *Number of swine to be delivered under existing contracts.* Existing contracts are contracts the packer currently is using for the purchase of swine for slaughter at each plant. Each packer must provide monthly estimates of the number of swine committed to be delivered under all of its existing contracts (even if those contracts are not currently available for renewal or to additional producers) in each contract type as defined in § 206.1.

(2) *Available contracts.* Available contracts are the contracts the packer is currently making available to producers, or is making available for renewal to currently contracted producers, for the purchase of swine for slaughter at each plant. On the monthly report, a packer will indicate each contract type, as

defined in § 206.1, that the packer is currently making available.

(3) *Estimates of committed swine.* Each packer must provide an estimate of the total number of swine committed under existing contracts for delivery to each plant for slaughter within each of the following 12 calendar months beginning with the 1st of the month immediately following the due date of the report. The estimate of total swine committed will be reported by contract type as defined in § 206.1.

(4) *Expansion clauses.* Any conditions or circumstances specified by clauses in any existing contracts that could result in an increase in the estimates specified in paragraph (c)(3) of this section. Each packer will identify the expansion clauses in the monthly report by listing a code for the following conditions:

(i) Clauses that allow for a range of the number of swine to be delivered.

(ii) Clauses that require a greater number of swine to be delivered as the contract continues.

(iii) Other clauses that provide for expansion in the numbers of swine to be delivered.

(5) *Maximum estimates of swine.* The packer's estimate of the maximum total number of swine that potentially could be delivered to each plant within each of the following 12 calendar months, if any or all of the types of expansion clauses identified in accordance with the requirement in paragraph (c)(4) of this section are executed. The estimate of maximum potential deliveries must be reported for all existing contracts by contract type as defined in § 206.1.

(d) *What if a contract does not specify the number of swine committed?* To meet the requirements of paragraphs (c)(3) and (c)(5) of this section, the packer must estimate expected and potential deliveries based on the best information available to the packer. Such information might include, for example, the producer's current and projected swine inventories and planned production.

(e) *When do I change previously reported estimates?* Regardless of any estimates for a given future month that may have been previously reported, current estimates of deliveries reported as required by paragraphs (c)(3) and (c)(5) of this section must be based on the most accurate information available at the time each report is prepared.

(f) *Where and how do I send my monthly report?* Each packer must submit monthly reports required by this section by either of the following two methods:

(1) *Electronic report.* Information reported under this section may be reported by electronic means, to the

maximum extent practicable. Electronic submission may be by any form of electronic transmission that has been determined to be acceptable to the Administrator. To obtain current options for acceptable methods to submit information electronically, contact GIPSA through the Internet on the GIPSA Web site (<http://www.gipsa.usda.gov>) or at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309.

(2) *Printed report.* Each packer may deliver its printed monthly report to USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309.

(g) *What information from monthly reports will be made available to the public and when and how will the information be made available to the public?*

(1) *Availability.* GIPSA will provide a monthly report of estimated deliveries by contract types as reported by packers in accordance with this section, for public release on the first business day of each month. The monthly reports will be available on the Internet on the GIPSA Web site (<http://www.gipsa.usda.gov>) and at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309.

(2) *Regions.* Information in the report will be aggregated and reported by geographic regions. Geographic regions will be defined in such a manner to provide as much information as possible while maintaining confidentiality in accordance with section 251 of the Agricultural Marketing Act (7 U.S.C. 1636) and may be modified from time to time.

(3) *Reported information.* The monthly report will provide the following information:

(i) The existing contract types for each geographic region.

(ii) The contract types currently being made available to additional producers or available for renewal to currently contracted producers in each geographic region.

(iii) The sum of packers' reported estimates of the total number of swine committed by contract for delivery during the next 6 and 12 months beginning with the month the report is published. The report will indicate the number of swine committed by geographic reporting region and by contract type.

(iv) The types of conditions or circumstances as reported by packers that could result in expansion in the numbers of swine to be delivered under the terms of expansion clauses in the contracts at any time during the following 12 calendar months.

(v) The sum of packers' reported estimates of the maximum total number of swine that potentially could be delivered during each of the next 6 and 12 months if all expansion clauses in current contracts are executed. The report will indicate the sum of estimated maximum potential deliveries by geographic reporting region and by contract type.

(h) *Where and how do I file a 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.

**J. Dudley Butler,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

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## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Part 140**

**[NRC-2009-0516]**

**RIN 3150-A174**

### **Increase in the Primary Nuclear Liability Insurance Premium**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations that govern financial protection requirements and indemnity agreements to increase the primary nuclear liability insurance layer from \$300 million to \$375 million for liability insurance coverage in the event of nuclear incidents at licensed, operating, commercial nuclear power plants with a rated capacity of 100,000 kW or more.

**DATES:** *Effective Date:* May 3, 2010.

**FOR FURTHER INFORMATION CONTACT:** Anneliese Simmons, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington,

DC 20555-0001, telephone 301-415-2791, e-mail [Anneliese.Simmons@nrc.gov](mailto:Anneliese.Simmons@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The NRC regulations at 10 CFR part 140, "Financial Protection Requirements and Indemnity Agreements," provide requirements and procedures for implementing the financial protection requirements for certain licensees and other persons under section 170 of the Atomic Energy Act (AEA) of 1954, as amended. Section 140.11(a)(4) specifies the amount of financial protection required of a licensee for a nuclear reactor that is licensed to operate, is designed for the production of electrical energy, and has a rated capacity of 100,000 kW or more. This amount is currently \$300 million and will increase to \$375 million, based on an adjustment by American Nuclear Insurers (ANI), which currently writes all nuclear liability policies. On a periodic basis, ANI assesses current insurance levels to insure that adequate financial protection is available, and adjusts insurance levels as required. This adjustment is required by the Price-Anderson Amendments Act of 1988.

To implement this adjustment, the Commission is revising 10 CFR 140.11(a)(4), effective 30 days after publication in the **Federal Register**, to require large nuclear power plant licensees to maintain \$375 million in primary financial protection. Because this adjustment by the Commission is essentially ministerial in nature, the Commission finds that there is good cause for omitting notice and public comment (in the form of a proposed rule) on this action as unnecessary, under the Administrative Procedure Act of 1946 (5 U.S.C. 553b).

### **Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995, Public Law 104-113, requires agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such standards is inconsistent with applicable law or is otherwise impractical. The NRC is amending its regulations to increase the primary premium for liability insurance coverage in the event of nuclear incidents at licensed, operating, commercial nuclear power plants with a rated capacity of 100,000 kW or more. This action does not constitute the establishment of a standard that contains generally applicable requirements.