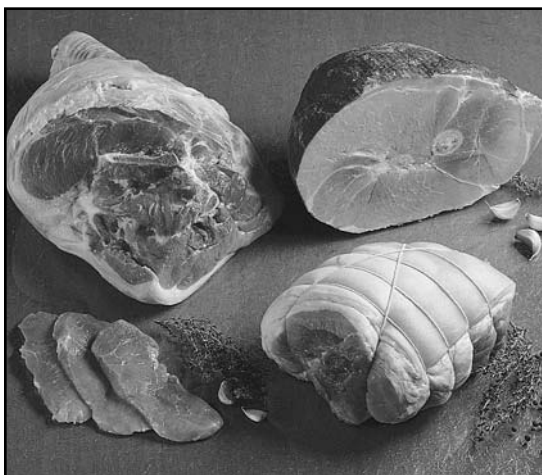




# **Legal Requirements for Marketing Pork Products...**

*Adding value to live hogs*

**What pork  
producers  
need to know  
to maintain  
compliance with  
the Packers and  
Stockyards Act  
and Iowa  
Packer Laws**



**IOWA PORK<sup>®</sup>  
PRODUCERS ASSOCIATION**

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**P**roducers are increasingly interested in processing their hogs and selling the meat directly to consumers to capture more of the sales price of the meat products. The details of the business arrangements vary. One issue for producers entering into contractual agreements to have their livestock processed, either individually or as members of producer marketing groups, is whether they must comply with the Packers and Stockyards Act. The analysis in this booklet is based on information from the Packers and Stockyards Administration and independent research of the Packers and Stockyards Act and Regulations by the legal counsel for the Iowa Pork Producers Association. In addition to federal regulation, Iowa producers must comply with Iowa Code chapter 172A (bonding of slaughterhouse operators) and Iowa Code Section 9H.2 which prohibits packers from owning, controlling or operating a feedlot and prohibits packers from contract feeding swine in Iowa. The final sections of this booklet address those issues. As with any educational information on legal requirements, producers should consult their individual legal advisors for advice specific to their situations.

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## 1. Packers and Stockyards Act.

### a. Are producer marketing groups subject to regulation under the Packers & Stockyards Act?

A producer group meeting the following definition in the P & S Act is a packer and subject to regulation:

Any person in the business of:

- (1) **Buying** livestock in commerce for slaughter; or
- (2) **Manufacturing or preparing** meats or meat food products for sale or shipment in commerce; or
- (3) **Marketing** (1) meats, (2) meat food products, or (3) livestock products in an unmanufactured form, and acting as a wholesale broker, dealer, or distributor in commerce. See 7 United States Code 191.

If a producer group actually owns or operates a processing facility, it obviously would qualify as a packer. If the group does not process the hogs themselves, it is likely to either (1) purchase live hogs from individual producer members for processing under

contract with a packer or (2) market meat for individual producers who maintain ownership until the meat is marketed by the producer group. Under either scenario, the producer group would qualify as a packer under the P & S Act. If the group purchases the live hogs from the individual producer for processing under contract with a packer, the group would qualify as a packer because the group would be buying livestock in commerce for slaughter. If the individual producer member maintains ownership of the hogs until they are processed into meat products and then marketed through the producer group, the producer group would meet the definition of packer because the group would be marketing meats, meat food products, or livestock products in an unmanufactured form, as a wholesale broker, dealer, or distributor.

In summary, a producer group marketing either live hogs or meat products for individual producer members is subject to regulation as a packer under the Packers and Stockyards Act. However, the distinction between marketing live hogs or meat products through a producer group is important in determining the regulations the group must comply with.

## **b. Regulations Under the Packers & Stockyards Act.**

A producer group qualifying as a packer may be subject to the following requirements:

### **i. Bonding.**

#### **Who is required to obtain a bond?**

**Packers.** Each packer purchasing livestock must file and maintain a reasonable bond with P & S. *See 9 Code of Federal Regulations 201.29(d).* There are two exceptions to the bonding requirement. First, packers whose annual purchases do not exceed \$500,000 are not required to be bonded. Secondly, because the regulations require bonding for purchases of livestock, packers who purchase and/or market meat products without purchasing live hogs do not need to be bonded.

Thus, if an individual producer member sells live hogs to a producer marketing group which then processes the hogs under contract with a packer and markets the meat

products, the group must be bonded as a packer if the group's annual purchases are more than \$500,000. However, if the producer member retains ownership of the live hogs until they are processed into meat products with the producer group marketing the meat products for the producer member, the producer group is not required to be bonded. Under both scenarios, the group is a packer and even if it is not required to be bonded, the group is subject to other packer regulation.

### **Amount of bond requirements.**

The amount of the bond is based on the average amount of livestock purchased during two business days. *See 9 CFR 201.30(b) and (d)*. The value of the bond required is determined by dividing the total dollar value of livestock purchased during the preceding business year or portion of the year, by one-half of the number of days that business was conducted (this number not to exceed 130). The amount of bond coverage must be the next multiple of \$5,000 above the calculated amount. However, the minimum bond coverage is \$10,000.

To determine if the \$500,000 exemption applies to a newly-established packer, the packer must reasonably project its livestock purchases for the first year. (*See In re Norwich Veal & Beef, Inc., 37 Agric. Dec. 214, 216 (1978)*) This court decision was in response to the argument that a new packer did not need to be bonded until it reached \$500,000 in livestock purchases in a year. The Judicial Officer stated: "...the purpose of the \$500,000 provision was to exempt small packers (– not new packers)."

### **Bond conditions.**

The bond requirements may be met by a surety bond or surety bond equivalent of: (1) cash funds under a trust fund agreement; or (2) a trust agreement for funds under an irrevocable, standby letter of credit. *9 CFR 201.27*.

In addition, the regulations set out the requirements for trustees, the specific conditions which must be in each bond or bond equivalent and procedures for filing, maintaining and terminating bonds. *9 CFR 201.31 - .34*.

To summarize bonding requirements, a producer group **purchasing live hogs** as a packer must be bonded. A producer group marketing meat **but not purchasing live hogs** is not required to be bonded. The amount of the bond does not appear to be prohibitive. However, bonding companies base the decision of whether to issue a bond and the amount of the bond premium on the financial status of the applicant. The decision of the bond company would be based on the assets of the producer group and any other signatories on the bond.

The decision for producer groups is whether to pay individual members for live hogs and meet bonding requirements or have members retain ownership until the hogs are processed thereby avoiding bonding requirements. Members of producer groups may prefer payment for live hogs because of cash flow concerns. On the other hand, collectively the members of the group may want to avoid obtaining a bond. A producer group must inform members of the requirements under the P & S Act and weigh the pros and cons of each alternative.

Finally, a producer group which markets meat products is a packer under the P & S Act but is not required to be bonded because it does not purchase livestock. Because the group is a packer, it may be subject to other requirements of the Act. Those requirements include fair trade practices, registration, and recordkeeping.

- ii. **Prompt Payment.** The Act requires anyone subject to the Act to make full and prompt payment for livestock. *7 U.S.C. 228b*. Unless otherwise agreed in writing before the sale, a seller is entitled to payment before the close of business the next business day following the sale. If a check is mailed, the check must be mailed by the close of business on the day after the sale. *7 CFR 203.16*. If livestock is sold on carcass merit, payment must be made before the close of business the next business day following determination of the sales price.

Packers may enter into written agreements with producers before the sale of livestock to waive prompt payment requirements. The written agreement must be kept in the packer's records for at least two years.

**iii. Prohibitions on Unfair, Discriminatory, Deceptive and Anticompetitive Practices.** The following practices have been ruled in violation of the Packers and Stockyards Act:

- (1) Commercial bribery.
- (2) Brokerage fees and price refunds.
- (3) “Bait and switch” in selling meat.
- (4) Price discounts and other discriminations.
- (5) Failure to conduct operations in competition with and independently of other packers and dealers.
- (6) Price fixing and conspiring to set terms of sale.
- (7) Packer interest in dealer or market agency.
- (8) False weighing of livestock.
- (9) Failure to obtain a bond.
- (10) Purchasing livestock for speculation.

**iv. Registration and Recordkeeping.** The USDA determines if a packer is required to be bonded by requiring a packer to complete a form entitled “Packers Inquiry.” Packers must file annual reports on forms provided by the agency. Annual reports are due by April 15 of each year or 90 days after the close of the packer’s fiscal year.

## **2. Iowa Law – Packer Licensing and Bonding.**

Iowa Code chapter 172A prohibits any business from slaughtering live animals (including swine) or receiving, buying or soliciting live animals for slaughter unless the business is licensed by the Iowa Department of Agriculture and Land Stewardship. To obtain a license, the business must provide the department with proof of financial responsibility in the form of a bond or bond equivalent.

However, a packer bonded under the Packers and Stockyards Act is exempt from Iowa regulation of packers. The packer must file

a certified copy of the P & S Act bond with the Iowa Department of Agriculture and Land Stewardship.

For packers not required to have a P & S Act bond, there are two exemptions to Iowa law. First, a packer is exempt from Iowa regulation of packers if the average daily value of purchases of livestock for slaughter are less than \$2,500 during the preceding year or portion of a year the packer was purchasing livestock. (To calculate average daily value, Iowa law sets the number of business days in a year at 260.) In addition, Iowa packer licensing and bonding requirements do not apply if the packer is licensed under Iowa law as a locker plant, food establishment, or a food processing plant and the average daily value of purchases of livestock for slaughter are less than \$2,500 during the preceding year or portion of a year the packer was purchasing livestock.

### **3. Iowa Law – Packer Feeding of Swine.**

Iowa Code section 9H.2 restricts packer involvement in swine feeding in two ways:

- a. A processor of pork cannot own, control or operate a feedlot in Iowa in which hogs are fed for slaughter.**
- b. A processor cannot directly or indirectly contract for the care and feeding of swine in this state.**

Cooperatives, including value added coops formed under Chapter 501 of the Iowa Code, are exempt from these prohibitions if the cooperative contracts for the care and feeding of swine with a member of the cooperative who is actively engaged in farming.

The P & S Act definitions of packer do not apply under Iowa Code Chapter 9H. Chapter 9H defines a processor as a person, firm, corporation, limited liability company or limited partnership which alone or in conjunction with others directly or indirectly controls the manufacturing, processing or preparation for sale of beef or pork products with a total annual wholesale value of \$10 million or more. *Iowa Code section 9H.1(19).*

If a producer marketing group owns or operates a slaughtering plant, it would clearly qualify as a processor under Chapter 9H

and the producer group could not own, control or operate a swine operation nor could it contract feed swine with its members (unless it was organized as a cooperative). (This discussion of marketing groups under Chapter 9H assumes a marketing group has sales with a total annual wholesale value of \$10 million or more. If not, the group would not qualify as a processor and would be exempt from Iowa restrictions on packer feeding.)

If a producer marketing group purchases live hogs from members for processing under contract with a packer, the producer marketing group would qualify as a processor under Chapter 9H because it would control the “manufacturing, processing or preparation for sale” of pork products. The producer group could not own, control or operate a swine operation nor could it contract feed swine with its members unless it was organized as a cooperative.

If a producer marketing group markets meat products from hogs owned and processed by its individual members, and does not get involved in the manufacturing, processing or preparation for sale of pork products, the group would not qualify as a processor under Chapter 9H. However, the definition of processor includes “directly or indirectly” controlling manufacturing, processing or preparation for sale of pork products. If the producer group arranges for processing of its members’ live hogs, it could be found to be a processor by indirectly controlling the processing or preparation for sale of pork products.

If the producer marketing group is a processor, the group is prohibited under Iowa law from producing swine unless it is formed as a cooperative and the cooperative contract feeds with members. However, in most cases the producer members of a marketing group own and produce the hogs in their individual operations and the marketing group’s involvement is limited to handling the processing of the hogs and/or marketing of the meat products. Thus, restrictions on swine production by a producer group should not affect the goals of its members in forming and operating the marketing group. ■