

202B.102 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Base price*” means the price paid for swine, delivered to the processor, before application of any premiums or discounts, and expressed in dollars per hundred pounds of hot carcass weight as calculated in the same manner as provided in 7 C.F.R. § 59.30.

2. “*Business association*” means a person organized under statute or common law in this state or another jurisdiction for purposes of engaging in a commercial activity on a profit, cooperative, or not-for-profit basis, including but not limited to a corporation or entity taxed as a corporation under the Internal Revenue Code, nonprofit corporation, cooperative association, partnership, limited partnership, limited liability company, limited liability partnership, investment company, joint stock company, joint stock association, or trust, including but not limited to a business trust.

3. “*Cash or spot market purchase*” means the purchase of swine by a processor from a seller, if the swine are slaughtered not more than fourteen days after the date that the seller and the processor agree on a date of delivery of the swine for slaughter and the base price for purchasing the swine is determined by an oral or written agreement between seller and processor executed on the day the swine are delivered for slaughter.

4. “*Cattle operation*” means a location including but not limited to a building, lot, yard, corral, or other place where cattle for slaughter are fed or otherwise maintained.

5. “*Contract feeder*” means a person owning in the applicable reporting year, as provided in section 202B.301, more than two thousand five hundred swine or five thousand head of poultry, if the swine or poultry are subject to a contract or contracts for care and feeding by a person or persons other than the owner on land which is not owned, leased, or held by the owner.

6. “*Contract for the care and feeding of swine*” means an oral or written agreement executed between a person and the owner of swine, under which the person agrees to care for and feed the owner’s swine on the person’s premises. A contract for the care and feeding of swine does not include an agreement for the sale or purchase of swine.

7. “*Cooperative association*” means the same as defined in section 10.1.

8. “*Indirect*” means to act or attempt to accomplish an act through an interest in a business association, through one or more affiliates or intermediaries, or by any method other than a direct approach, including by any circuitous or oblique method.

9. “*Person*” means an individual, business association, government or governmental subdivision or agency, or any other legal entity.

10. “*Processor*” means a person who alone or in conjunction with others directly or indirectly controls the manufacturing, processing, or preparation for sale of beef or pork products, including the slaughtering of cattle or swine or the manufacturing or preparation of carcasses or goods originating from the carcasses, if the beef or pork products have a total annual wholesale value of eighty million dollars or more for the person’s tax year. A person shall be deemed to be a processor if any of the following apply:

a. The person has a threshold interest in a processor which is a business association. “*Threshold interest*” means a direct or indirect interest in the business association, calculated as follows:

(1) For a processor of beef products, the person’s threshold interest begins at ten percent.

(2) For a processor of pork products, the person’s threshold interest begins at ten percent for a processor of pork products having a total annual wholesale value of at least eighty million dollars and decreases to one percent for a processor of pork products having a total annual wholesale value of at least two hundred sixty million dollars. The amount of the decrease in the amount of the threshold interest shall equal one percent for each increased increment of twenty million dollars in total annual wholesale value.

b. The person holds an executive position in a processor of pork products or owes a processor of pork products a fiduciary duty if the processor directly or indirectly controls the processing of pork products having a total annual wholesale value of two hundred sixty million dollars or more. A person who held such an executive position or owed a fiduciary duty shall be deemed to still hold the position or owe the duty for a two-year period following the date that the person relinquishes the position or duty. An executive position in

a processor organized as a business association includes but is not limited to a member of a board of directors or an officer of a corporation or cooperative association, a director or officer of a joint stock company or joint stock association, a manager of a limited liability company, a general partner of a limited partnership, or a trustee of a trust.

11. “*Qualified processor*” means a processor of pork products if all of the following apply:

a. (1) (a) Swine producers exercise a controlling interest in the processor. “*Controlling interest*” means actual control or the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a processor, whether through the ownership of voting securities, by contract, or otherwise.

(b) Of the total interest held by all persons in the processor, swine producers hold at least sixty percent of the interest. In addition, of the total interest held by all persons in the processor, swine producers hold at least sixty percent of interests with voting rights.

(2) Of the total interest held by all persons in the processor, all retailers hold a total of not more than twenty percent of the interest.

b. Another processor does not hold a direct or indirect interest in the processor. However, this paragraph does not apply to a person deemed to be a processor solely because the person holds a threshold interest in the processor.

c. Not less than ten percent of the swine slaughtered by the processor each day are purchased through cash or spot market purchases.

d. The processor makes cash or spot market purchases of swine under the same terms and conditions from both sellers of swine who hold a direct or indirect interest in the processor and sellers of swine who do not hold a direct or indirect interest in the processor. In making such cash or spot market purchases of swine, the processor shall not provide sellers of swine who hold a direct or indirect interest in the processor with a preference over sellers of swine who do not hold a direct or indirect interest in the processor.

12. “*Retailer*” means a person who is engaged in the business of selling pork products, if all of the following apply:

a. The pork products are sold only on a retail basis directly to the ultimate purchasers of the pork products for consumption and not for resale.

b. The person is not engaged in the slaughter of swine.

c. A processor does not have a direct or indirect interest in the person.

13. “*Swine operation*” means a location where swine are fed or otherwise maintained, including a building, lot, yard, or corral; and swine which are fed or otherwise maintained at the location.

14. “*Swine producer*” means a person who owns, controls, or operates a swine operation or who contracts for the care and feeding of swine.

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