# CHAPTER 202B

## SWINE AND BEEF PROCESSORS

Referred to in §331.756(33)

Transferred from portions of chapter 9H in Code Supplement 2003
pursuant to Code editor directive in 2003 Acts, ch 115, §16, 19

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## SUBCHAPTER I

**202B.101 Purpose.**

The purpose of this chapter is to preserve free and private enterprise, prevent monopoly, and also to protect consumers by regulating the balance of competitive forces in beef and swine production, by enhancing the welfare of the farming community, and also by preventing processors from gaining control of beef or swine production.

2003 Acts, ch 115, §4, 16, 19

**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.

2003 Acts, ch 115, §1 – 3, 10, 16, 19

Referred to in **§202B.201**, **§202B.202**, **§202B.301**, **§203.1**, **§203C.1**, **§459.102**, **§459A.103**, **§459B.103**, **§579A.1**

SUBCHAPTER II

**202B.201 Prohibited operations and activities — exceptions.**

1. Except as provided in **subsections 2 and 3**, and **section 202B.202**, all of the following apply:

*a.* For cattle, a processor shall not own, control, or operate a cattle operation in this state.

*b.* For swine, a processor shall not do any of the following:

(1) (a) (i) Directly or indirectly own, control, or operate a swine operation in this state.

(ii) Finance a swine operation in this state or finance a person who directly or indirectly contracts for the care and feeding of swine in this state.

(iii) Obtain a benefit of production associated with feeding or otherwise maintaining swine, by directly or indirectly assuming a morbidity or mortality production risk, if the swine are fed or otherwise maintained as part of a swine operation in this state or by a person who contracts for the care and feeding of swine in this state.

(iv) Directly or indirectly receive the net revenue derived from a swine operation in this state or from a person who contracts for the care and feeding of swine in this state.

(b) For purposes of subparagraph division (a), subparagraph subdivisions (i) and (ii), both of the following apply:

(i) *"Finance"* means an action by a processor to directly or indirectly loan money or to guarantee or otherwise act as a surety.

(ii) *"Finance"* or *"control"* does not include executing a contract for the purchase of swine by a processor, including but not limited to a contract that contains an unsecured ledger balance or other price risk sharing arrangement. *"Finance"* also does not include providing an unsecured open account or an unsecured loan, if the unsecured open account or unsecured loan is used for the purchase of feed for the swine and the outstanding amount due by the debtor does not exceed five hundred thousand dollars. However, the outstanding amount due to support a single swine operation shall not exceed two hundred fifty thousand dollars.

(2) Directly or indirectly contract for the care and feeding of swine in this state.

2. **Subsection 1** shall not apply to a swine producer who holds a threshold interest in a qualified processor in the manner provided in **section 202B.102**, if all of the following apply:

*a.* The swine producer's threshold interest in the qualified processor is not more than ten percent.

*b.* The swine producer is not a processor. However, this paragraph does not apply to a swine producer deemed to be a processor solely because the swine producer holds a threshold interest in the qualified processor as otherwise allowed under **this subsection** or because the swine producer holds an executive position in the qualified processor or owes the qualified processor a fiduciary duty.

3. **This section** shall not preclude a processor from doing any of the following:

*a.* Contracting for the purchase of cattle or swine, provided that where the contract sets a date for delivery which is more than twenty days after the making of the contract, the contract shall do one of the following:

(1) Specify a calendar day for delivery of the cattle or swine.

(2) Specify the month for the delivery, and shall allow the farmer to set the week for the delivery within such month and the processor to set the date for delivery within such week.

*b.* Carrying on legitimate research, educational, or demonstration activities.

*c.* Owning and operating facilities to provide normal care and feeding of cattle or swine for a period not to exceed ten days immediately prior to slaughter, or for a longer period in an emergency.

[C77, 79, 81, §172C.2]
88 Acts, ch 1191, §3; 92 Acts, ch 1151, §5
C93, §9H.2
93 Acts, ch 39, §5, 6; 2000 Acts, ch 1048, §2, 3; 2002 Acts, ch 1095, §4, 10 – 12; 2003 Acts, ch 115, §5, 16, 19
CS2003, §202B.201
2009 Acts, ch 41, §79
Referred to in **§202B.302**, **§202B.401**

**202B.202 Compliance requirements.**

1. A cooperative association which is a party to a contract for the care and feeding of swine in compliance with **section 9H.2** prior to May 9, 2003, and which is in violation of **section 9H.2**, as amended by 2003 Iowa Acts, ch. 115, shall have until June 30, 2007, to comply with **section 9H.2**, as amended by 2003 Iowa Acts, ch. 115.

Notwithstanding any provision of **this section**, a cooperative association shall not take an action on or after May 9, 2003, that would be in violation of **section 9H.2**, as amended by 2003 Iowa Acts, ch. 115.

2. A processor that was in compliance with **section 9H.2**, Code 2001, prior to January 1, 2002, and which is in violation of **section 9H.2**, as amended by 2002 Acts, ch. 1095, shall have until June 30, 2006, to comply with **section 9H.2**, as amended by 2002 Acts, ch. 1095.

3. Notwithstanding any provision of **this section**, a processor shall not take an action on or after January 1, 2002, that would be in violation of **section 9H.2**, as amended by 2002 Acts, ch. 1095.

4. The two-year period that a person who holds an executive position in a processor or owes a processor a fiduciary duty and thus is deemed to be a processor as provided in **section 202B.102, subsection 10**, paragraph *"b"*, shall not apply if the person held the position or owed the duty on January 1, 2002, and relinquishes the position or duty on or before June 30, 2006.

2002 Acts, ch 1095, §5, 10 – 12
C2003, §9H.2A
2003 Acts, ch 115, §6 – 9, 16, 19
CS2003, §202B.202
2014 Acts, ch 1026, §143
Referred to in **§202B.201**
Code editor directive applied

SUBCHAPTER III

**202B.301 Reports by contract feeders.**

A contract feeder shall file with the secretary of state on or before March 31 of each year on forms adopted pursuant to **chapter 17A** and supplied by the secretary of state an annual report containing all of the following information, if applicable:

1. The name and address of the person.

2. For each county, which the contractor shall identify, the approximate total number of swine or head of poultry subject to a contract for feeding and care as described in **section 202B.102, subsection 6**.

3. The name and address of the purchaser of the swine or poultry.

88 Acts, ch 1191, §6
C89, §172C.5B

C93, §9H.5B
2002 Acts, ch 1095, §10 – 12; 2003 Acts, ch 115, §16, 19
CS2003, §202B.301
Referred to in **§202B.102**

**202B.302 Reports by processors.**

A processor shall file a report with the secretary of state on or before March 31 of each year, as follows:

1. For all processors, the report shall include all of the following:

*a.* The number of swine and the number of cattle owned and fed more than thirty days by the processor in this state during the processor's preceding tax year.

*b.* The total number of swine and the total number of cattle owned and fed more than thirty days by the processor during the processor's preceding tax year.

*c.* The number of swine and the number of cattle slaughtered in this state by the processor during the processor's preceding tax year.

*d.* The total number of swine and the total number of cattle slaughtered by the processor during the processor's preceding tax year.

*e.* The total wholesale value of beef or pork products that have been processed by the processor during the preceding tax year.

*f.* The total number of swine for which the processor has contracted for feeding as provided in **section 202B.201**.

2. For a qualified processor, the report shall include all of the following:

*a.* The total number of swine slaughtered each day during the qualified processor's preceding tax year.

*b.* The total number of swine slaughtered each day that are purchased through cash or spot market purchases during the qualified processor's preceding tax year.

[C77, 79, 81, §172C.9]
88 Acts, ch 1191, §7
C93, §9H.9
2000 Acts, ch 1022, §1; 2002 Acts, ch 1095, §7, 11, 12; 2003 Acts, ch 115, §16, 19
CS2003, §202B.302

**202B.303 Signing reports.**

Reports by corporations shall be signed by the president or other officer or authorized representative. Reports by limited liability companies shall be signed by a manager or other authorized representative. Reports by limited partnerships shall be signed by the president or other authorized representative of the partnership. Reports by individuals shall be signed by the individual or an authorized representative.

[C77, 79, 81, §172C.10]
C93, §9H.10
93 Acts, ch 39, §19; 2003 Acts, ch 115, §16, 19
CS2003, §202B.303

**202B.304 Duties of secretary of state.**

The secretary of state shall notify the attorney general when the secretary of state has reason to believe a violation of **this chapter** has occurred. It is the intent of **this section** that information shall be made available to members of the general assembly and appropriate committees of the general assembly in order to determine the extent of production operations being carried out in this state by contract feeders and processors and the effect of such practices upon the economy of this state. The reports of contract feeders and processors required in **this chapter** shall be confidential reports except as to the attorney general for review and appropriate action when necessary. The secretary of state shall assist any committee of the general assembly existing or established for the purposes of studying the effects of **this chapter** and the practices **this chapter** seeks to study and regulate.

[C77, 79, 81, §172C.14]
88 Acts, ch 1191, §9; 91 Acts, ch 172, §7

C93, §9H.14
93 Acts, ch 39, §20; 2003 Acts, ch 115, §13, 16, 19
CS2003, §202B.304

**202B.305 Additional information.**

The secretary of state shall request additional information as may be necessary or appropriate to enable the secretary of state to administer **this chapter**.

[C77, 79, 81, §172C.15]
C93, §9H.15
2003 Acts, ch 115, §16, 19
CS2003, §202B.305

SUBCHAPTER IV

**202B.401 Penalties — injunctive relief.**

1. The courts of this state may prevent and restrain violations of **this chapter** through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of **this chapter**.

2. *a.* A processor who violates **section 202B.201** is subject to a civil penalty of not more than twenty-five thousand dollars. Each day that a violation continues shall be considered a separate offense.

*b.* If the attorney general or a county attorney is the prevailing party in an action for a violation of **section 202B.201**, the prevailing party shall be awarded court costs and reasonable attorney fees, which shall be taxed as part of the costs of the action. If the attorney general is the prevailing party, the moneys shall be deposited in the general fund of the state. If the county is the prevailing party, the moneys shall be deposited in the general fund of the county.

[C77, 79, 81, §172C.3]
91 Acts, ch 172, §3
C93, §9H.3
2002 Acts, ch 1095, §6, 11, 12; 2003 Acts, ch 115, §16, 19
CS2003, §202B.401

**202B.402 Penalties — reports.**

Failure to timely file a report or the filing of false information is punishable by a civil penalty not to exceed one thousand dollars.

For purposes of **this section** a report is timely filed if the report is filed prior to May 1 of the year in which it is required to be filed.

The secretary of state shall notify a person who the secretary has reason to believe is required to file a report as provided by **this chapter** and who has not filed a timely report, that the person may be in violation of **this section**. The secretary of state shall include in the notice, a statement of the penalty which may be assessed if the required report is not filed within thirty days. The secretary of state shall refer to the attorney general any person who the secretary has reason to believe is required to report under **this chapter** if, after thirty days from receipt of the notice, the person has not filed the required report. The attorney general may, upon referral from the secretary of state, file an action in district court to seek the assessment of a civil penalty of one hundred dollars for each day the report is not filed.

[C77, 79, 81, §172C.11]
91 Acts, ch 172, §6
C93, §9H.11
2003 Acts, ch 115, §16, 19
CS2003, §202B.402