

Proposed Rules

This section of the **FEDERAL REGISTER** contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS-02-09]

Pork Promotion, Research, and Consumer Information Order: Rules and Regulations—Decrease in Assessment Rate and Decrease of Importer Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 (Act) and the Pork Promotion, Research, and Consumer Information Order (Order) thereunder, this proposed rule would decrease the current rate of assessment of 0.45 percent of the market value of porcine animals to 0.40 percent, and decrease the amount of assessment per pound due on imported pork and pork products (two- to four-hundredths of a cent per pound) to reflect the combined effect of the increase in the 2001 average price for domestic barrows and gilts (about 7 percent) and the proposed decrease in the assessment rate. The assessment decrease would decrease annual funding of the promotion, research, and consumer information program by an estimated \$5 million to \$6 million with an estimated \$290,000 decrease in importer assessments. The assessment decrease reflects the National Pork Producers Delegate Body's (Delegate Body) desire to lessen the assessment burden on producers and make such funds available to pork producers and the industry. The adjustment in importer assessments also would bring the equivalent market value of live animals from which imported pork and pork products are derived in line with the market value of domestic porcine animals. A Harmonized Tariff Schedule (HTS) number for prepared or

preserved pork also would be added to the regulations.

DATES: Written comments must be received by August 19, 2002.

ADDRESSES: Send a copy of your comments to Kenneth R. Payne, Chief, Marketing Programs Branch, Room 2627-S; Livestock and Seed Program, AMS, USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250-0251. Comments may also be submitted electronically to:

porkcomments@usda.gov or by facsimile at 202/720-1125. All comments should reference the docket number LS-02-09, the date, and the page number of this issue of the **Federal Register**. Comments will be available for public inspection via the Internet at <http://www.ams.usda.gov/lsg/mpb/rp-pork.htm> or during regular business hours, 8:00 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, 202/720-1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12988, the Regulatory Flexibility Act, and the Paperwork Reduction Act

The Office of Management and Budget has waived the review process required by Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposal is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an order may file a petition with the Department of Agriculture (Department) stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with the law; and requesting

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a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Department would rule on the petition. The Act provides that the district court of the United States in the district in which a person resides or does business has jurisdiction to review the Department's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

This action also was reviewed under the Regulatory Flexibility Act (5 United States Code (U.S.C.) 601 *et seq.*). The effect of the Order upon small entities initially was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898). It was determined at that time that the Order would not have a significant effect upon a substantial number of small entities. Many of the estimated 81,000 pork producers and 500 importers may be classified as small entities under the Small Business Administration definition (13 CFR 121.201).

This proposed rule would decrease the rate of the assessment from 0.45 percent of the market value of porcine animals to 0.40 percent, and would decrease the cents per pound and per kilogram of assessments on imported pork and pork products subject to assessment. Adjusting the rate of assessment from 0.45 percent to 0.40 percent and decreasing the assessment on imported pork and pork products would result in an estimated decrease in assessments of \$5 million to \$6 million over a 12-month period. Of that amount, approximately \$290,000 would be attributed to the decrease in importer assessments. The gross market value of all swine marketed in the United States during 2000 exceeded \$11.7 billion. This decrease would reduce the assessment burden on producers. The adjustment in importer assessments also would bring the equivalent market value of live animals from which imported pork and pork products are derived in line with the market value of domestic porcine animals. A HTS number for prepared or preserved pork also would be added to the regulations. Therefore, the economic impact of the proposed assessments will not be a significant part of the total market value of swine. Accordingly, the Administrator of the Agricultural Marketing Service (AMS)

has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, 56 FR 51635, 60 FR 29963, 61 FR 29002, 62 FR 26205, 63 FR 45936, 64 FR 44643, and 66 FR 67071) and assessments began on November 1, 1986. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and on imported porcine animals with an equivalent assessment on pork and pork products. However, that rate was increased to 0.35 percent effective December 1, 1991 (56 FR 51635), and to 0.45 percent effective September 3, 1995 (60 FR 29963). Based on the assessment rate of 0.45 percent, the total annual assessments collected during 2001 were approximately \$57.4 million. Assessments on imported pork and pork products accounted for about \$3.7 million of the total.

The Order requires that producers pay to the National Pork Board an assessment of 0.45 percent of the market value of each porcine animal upon sale. However, for purposes of collecting and remitting assessments, porcine animals are divided into three separate categories (1) feeder pigs, (2) slaughter hogs, and (3) breeding stock. The Order specifies that purchasers of feeder pigs, slaughter hogs, and breeding stock shall collect an assessment on these animals if assessments are due. The Order further provides that for the purpose of collecting and remitting assessments persons engaged as a commission merchant, auction market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

The Order requires importers of porcine animals to pay U.S. Customs Service (USCS), upon importation, the assessment of 0.45 percent of the porcine animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.45 percent of the market value of the live porcine animals from which such pork and pork producers were produced.

The Act and § 1230.71 of the Order contain provisions for adjusting the initial rate of assessment. The Delegate Body has the responsibility to recommend the rate of assessment to the Department. The 2002 Delegate Body, at its annual meeting on March 1–2, 2002, in Denver, Colorado, voted to recommend to the Department that the rate of assessment of 0.45 percent be decreased to 0.40 percent. There were 167 Delegate Body members appointed by the Secretary in 2002. At the Delegate Body meeting 144 delegates were present during voting and voted 50,750.1 valid share votes. States and importers are allotted one share per \$1,000 of the aggregated amount of assessment collected. There were 29,974.9 share votes cast in favor of the 0.05 percent decrease.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the rate of assessment or changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic and porcine animals and imported pork and pork products.

This proposed rule would decrease the amount of assessment on all of the imported pork and pork products subject to assessment as published in the **Federal Register** as a final rule December 28, 2001, and effective on January 28, 2002 (66 FR 67071). The assessment decrease reflects the Delegate Body's desire to lessen the assessment burden on producers and make such funds available to pork producers and the industry. The adjustment in importer assessments also would bring the equivalent market value of live animals from which imported pork and pork products are derived in line with the market value of domestic porcine animals. A HTS number for prepared or preserved pork also would be added to the regulations.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the Department's Agricultural Handbook No. 697 "Conversion Factors and Weights and Measurers." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork

components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 74 percent, which is the average dressing percentage of porcine animals in the United States as recognized by the industry. Thirdly, the equivalent value of the live porcine animals is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as calculated by the Department's, AMS, Livestock and Grain Market News (LGMN) Branch. Finally, the equivalent value is multiplied by the applicable assessment rate due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

Since the last adjustment was made in the amount of the assessment due on live hogs and imported pork and pork products (66 FR 67071), there has been a change in the way LGMN Branch reports hog prices. Due to the implementation of the Livestock Mandatory Price Reporting Program, LGMN no longer report hogs on a live basis because most of the industry moved to buying hogs on a carcass basis. Thus, the Iowa-Southern Minnesota hog reports are now reported on a carcass basis defined by muscle and fat. Previously, these reports were quoted for 49–52 percent lean yield barrows and gilts weighing an average of 240–280 pounds live weight. Therefore, the only consistent price available for hogs for calendar year 2001 is the average base carcass price for 51–52 percent lean hogs derived from the National Base Lean Hog Carcass Slaughter Cost Report. To convert this figure to a live basis, it must be multiplied by 74 percent, the average dressing percentage of porcine animals in the United States as recognized by the industry.

The average annual market price increased from \$42.70 per hundredweight in 2000 to \$45.87 per hundredweight in 2001, an increase of about 7 percent. The combined effect of the proposed assessment rate decrease and the increase in the average annual market price would result in a decrease in assessments for all HTS numbers listed in the table in § 1230.110(b), 66 FR 67071; December 28, 2001, of an amount equal to two- to four-hundredths of a cent per pound, or as

expressed in cents per kilogram, four-hundredths to nine-hundredths of a cent per kilogram. Based on Department of Commerce, Bureau of Census, data on the volume of pork and pork products imported during 2001, the proposed decreases in the assessment amounts would result in an estimated \$290,000 decrease in importer assessments over a 12-month period. In addition, this rule adds a new HTS number—1602.49.9000—to the table in § 1230.110(b). This HTS number has been assigned to prepared or preserved pork. In 2001, over 2,114 metric tons of prepared or preserved pork products were imported into the United States as reported by the Department of Commerce.

This proposed rule provides for a 30-day comment period which is deemed appropriate because the proposed rule provides for a decrease in the assessment rate and it is intended to implement this change, if adopted, as soon as possible so that the funds representing the decrease will be available to pork producers and the pork industry at the earliest possible date.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agriculture research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1230 be amended as set forth below:

Live porcine animals	Assessment
0103.10.0000	0.40 percent Customs Entered Value.
0103.91.0000	0.40 percent Customs Entered Value.
0103.92.0000	0.40 percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are

subject to assessment at the rates specified.

Pork and Pork Products	Assessment	
	cents/lb	cents/kg
0203.11.0000 .....	.25	.551150
0203.12.1010 .....	.25	.551150
0203.12.1020 .....	.25	.551150
0203.12.9010 .....	.25	.551150
0203.12.9020 .....	.25	.551150
0203.19.2010 .....	.29	.639334
0203.19.2090 .....	.29	.639334
0203.19.4010 .....	.25	.551150
0203.19.4090 .....	.25	.551150
0203.21.0000 .....	.25	.551150
0203.22.1000 .....	.25	.551150
0203.22.9000 .....	.25	.551150
0203.29.2000 .....	.29	.639334
0203.29.4000 .....	.25	.551150
0206.30.0000 .....	.25	.551150
0206.41.0000 .....	.25	.551150
0206.49.0000 .....	.25	.551150
0210.11.0010 .....	.25	.551150
0210.11.0020 .....	.25	.551150
0210.12.0020 .....	.25	.551150
0210.12.0040 .....	.25	.551150
0210.19.0010 .....	.29	.639334
0210.19.0090 .....	.29	.639334
1601.00.2010 .....	.34	.749564
1601.00.2090 .....	.34	.749564
1602.41.2020 .....	.37	.815702
1602.41.2040 .....	.37	.815702
1602.41.9000 .....	.25	.551150
1602.42.2020 .....	.37	.815702
1602.42.2040 .....	.37	.815702
1602.42.4000 .....	.25	.551150
1602.49.2000 .....	.34	.749564
1602.49.4000 .....	.29	.639334
1602.49.9000 .....	.29	.639334

3. Section 1230.112 is revised to read as follows:

§ 1230.112 Rate of assessment.

In accordance with § 1230.71(d) the rate of assessment shall be 0.40 percent of market value.

Dated: July 15, 2002.

A. J. Yates,
Administrator, Agricultural Marketing Service.

[FR Doc. 02-18258 Filed 7-18-02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1470

RIN 0560-AG63

Apple Market Loss Assistance Payment Program II

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This rule establishes the Apple Market Loss Assistance Payment Program II. The program will provide direct payments to apple producers to provide relief due to the low prices received for their 2000 crop.

DATES: Comments on this rule must be received on or before August 19, 2002, to be assured consideration. Comments on the information collections in this rule must be received by September 17, 2002 to be assured consideration.

ADDRESSES: Comments should be mailed to Grady Bilberry, Director, Price Support Division (PSD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0512, 1400 Independence Avenue, SW, Washington, DC 20250-0512; telephone (202) 720-7901 or e-mail: danielle_cooke@wdc.usda.gov. Comments may be inspected in the Office of the Director, PSD, FSA, USDA, Room 4095 South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is available on the PSD home page at <http://www.fsa.usda.gov/dafp/psd/>.

FOR FURTHER INFORMATION CONTACT:
Danielle Cooke, FSA; telephone (202) 720-1919

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order

12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking on the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws that are inconsistent with this rule. Before any judicial action may be brought concerning this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the USDA is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking on the subject matter of this rule. Further, in any case, these provisions do not impose any mandates on state, local or tribal governments, or the private sector.

Federal Assistance Program

The title and number of the Federal assistance program, as found in the Catalogue of Federal Domestic Assistance, to which this rule applies are: 10.075—Special Apple Program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, FSA has submitted an emergency information collection request to OMB for the approval of the Apple Market Loss Assistance Payment Program application as necessary for the proper functioning of the program.

Title: Apple Market Loss Assistance Payment Program.

OMB Control Number: 0560-0210.

Type of Request: Request for a reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: Apple operations are eligible to receive direct payments provided they make certifications that attest to their eligibility to receive such payments. As appropriate, these operations must certify: (1) The pounds of apples produced and harvested during the 2000 crop year; (2) receipt of no other payments by the apple operation for the market loss of apples from any other Federal program, except Federal Crop Insurance; and (3) that they understand the apple operation may be randomly selected by the Commodity Credit Corporation (CCC) to provide documentation during a spot check to verify claims. The information collection will be used by CCC to determine the program eligibility of apple operations. CCC considers the information collected essential to prudent eligibility determinations and payment calculations. Additionally, without accurate information on apple operations, the national payment rate would be inaccurate, payments could be made to ineligible recipients, and the integrity and accuracy of the program could be compromised.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Apple Operations.

Estimated Number of Respondents: 10,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10,840 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Grady Bilberry, Director, Price Support