

# Proposed Rules

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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 59

[Docket No. LS-01-08]

RIN 0581-AB98

#### Livestock Mandatory Reporting; Amendment To Revise Lamb Reporting Definitions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** This proposed rule would amend the Livestock Mandatory Reporting regulations to modify the requirements for the submission of information on domestic and imported boxed lamb cuts sales. This rule would amend the definition of "carlot-based" by inserting language to limit carlot-based sales of boxed lamb cuts to transactions between a buyer and a seller consisting of 1,000 pounds or more of one or more individual boxed lamb items. This rule would also amend the definition of "importer" by reducing the volume level of annual lamb imports establishing a person as an importer from 5,000 metric tons of lamb meat products per year to 2,500 metric tons. This amendment would improve the accuracy and reliability of the data being reported by the Agricultural Marketing Service (AMS) on domestic boxed lamb cuts sales by ensuring that the bulk of data being reported is representative of the market, thus enabling producers to evaluate market conditions and make more informed marketing decisions. This amendment would also increase the volume of imported products that would be reported to AMS, which will permit AMS to publish reports on the sales of imported boxed lamb cuts.

**DATES:** Comments must be submitted on or before December 26, 2003 to be assured of consideration.

#### ADDITIONAL INFORMATION OR COMMENTS:

Comments may be sent to John E. Van Dyke, Chief, Livestock and Grain Market News Branch, Livestock and Seed Program, Agricultural Marketing Service, USDA, 1400 Independence Avenue, SW, Room 2619-South Building, Stop 0252, Washington, DC 20250-0242; telephone (202) 720-6231, facsimile (202) 690-3732, E-mail [marketnewscomments@usda.gov](mailto:marketnewscomments@usda.gov). For further information, contact John E. Van Dyke at the above address. Comments received may be inspected at 1400 Independence Avenue, SW, Room 2619-South Building, Washington, DC between 7:30 a.m. and 4 p.m. The comments will also be posted on the Livestock and Grain Market News Branch Web site, located at <http://www.ams.usda.gov/lsmnpubs/>.

#### SUPPLEMENTARY INFORMATION:

##### Background

In accordance with the Livestock Mandatory Reporting Act of 1999 (Act) [7 U.S.C. 1635h-1636h], regulations implementing a mandatory program of reporting information related to the marketing of cattle, swine, lambs, and products of such livestock, were published in the *Federal Register* on December 1, 2000 (65 FR 75464). This Livestock Mandatory Reporting (LMR) program requires the submission of market information by packers who have annually slaughtered an average of 125,000 cattle or 100,000 swine over the most recent 5 calendar year period, or have annually slaughtered or processed an average of 75,000 lambs over the most recent 5 calendar year period. Importers who have annually imported an average of 5,000 metric tons of lamb meat products over the most recent 5 calendar year period are also subject to mandatory reporting requirements. The LMR program is intended to provide information on pricing, contracting for purchase, and supply and demand conditions for livestock, livestock production, and livestock products that can be readily understood by producers, packers, and other market participants.

Section 241 of the Act gives the Department of Agriculture (USDA) authority to establish a mandatory lamb price reporting program that will, (1) provide timely, accurate, and reliable market information; (2) facilitate more informed marketing decisions; and (3) promote competition in the lamb

slaughtering industry. AMS established submission requirements for lamb packers and lamb importers in accordance with this authority based upon its extensive knowledge of the lamb industry gained through a program of voluntary market information reporting of lamb.

Under the mandatory lamb price reporting program, packers are required to report information daily on domestic sales of boxed lamb cuts each reporting day including prices for sales, the type of sale, the branded product characteristics, the quantity of each sale, the USDA grade, trim specification, weight range, delivery period, the quantity of boxes of each cut, the weight range of each cut, and the product state of refrigeration. USDA reports on domestic boxed lamb cut sales to the public once each reporting day.

For any calendar year, a lamb importer who imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years is required to report to USDA weekly the prices received for imported lamb cuts sold on the domestic market. Additionally, an importer that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years is also required to report the above information, if USDA determines that the person should be considered an importer based on their volume of lamb imports.

Because there are not enough daily sales of imported products to meet the confidentiality guidelines and allow USDA to publish daily reports, lamb importers are required to report weekly prices received for sales of imported boxed lamb cuts sold on the domestic market during the prior week including the quantity of each transaction, the type of sale, the branded product characteristics, the product state of refrigeration, the cut of lamb, the trim specification, the cut weight range, and the product delivery period.

Boxed lamb is defined in the LMR regulations to mean those carlot-based portions of a lamb carcass including fresh primals, subprimals, cuts fabricated from subprimals, excluding portion-control cuts such as chops and steaks similar to those portion cut items described in the Institutional Meat Purchase Specifications (IMPS) for

Fresh Lamb and Mutton Series 200, and thin meats (e.g., inside and outside skirts, pectoral meat, cap and wedge meat, and blade meat) not older than 14 days from date of manufacture; fresh ground lamb, lamb trimmings, and boneless processing lamb not older than 7 days from date of manufacture; frozen primals, subprimals, cuts fabricated from subprimals, and thin meats not older than 180 days from date of manufacture; and frozen ground lamb, lamb trimmings, and boneless processing lamb not older than 90 days from date of manufacture.

In the period since the implementation of the LMR program on April 2, 2001, the current collection of boxed lamb cuts market information has prevented AMS from publishing meaningful market information on sales of imported and domestic boxed lamb cuts. Because of this, the current definitions of the terms "carlot-based" and "importer" under the LMR regulations need to be amended.

In the LMR regulations, the term "carlot-based" is defined as, "any transaction between a buyer and a seller destined for three or less delivery stops consisting of one or more individual boxed lamb items or any combination of carcass weights." However, in practice, the definition of carlot-based has resulted in having virtually all sales of boxed lamb cuts reported, including distributive-based transactions, as frequently packers of boxed lamb cuts do not know the exact number of stops a truck will make at the time that the prices are established and the sales are made.

Distributive-based sales are largely comprised of unique, value-added products in which prices often reflect added customer services. Because of the uniqueness of the distributive trade and the potential affect that the inclusion of such information might have on the aggregated reports AMS would publish, it was not intended to include the information in the LMR program. Such information may create a perception of wide price ranges in market reports for boxed lamb cuts and could send misleading signals to producers and packers as to the true direction of the market direction.

AMS has discussed and reviewed the issue of carlot-based and distributive-based transactions with lamb industry packers and processors. Based upon its review of this matter, including actual reporting on a 1,000 pounds or more basis, AMS believes that the 1,000 pound threshold is a more accurate dividing line between carlot-based sales and distributive-based sales and is

consistent with the original intent of the regulation.

In order to conform to the original intent of not including these types of transactions, AMS proposes amending the boxed lamb cuts portion of the definition of "carlot-based" (7 CFR 59.300) by limiting reportable sales of boxed lamb cuts to those consisting of 1,000 pounds or more of one or more individual boxed lamb items. The 1,000 pound threshold is intended to separate out distributive-based transactions. This proposal would amend the definition of "carlot-based" to read, "The term 'carlot-based', when used in reference to lamb carcass sales, means any transaction between a buyer and a seller destined for three or less delivery stops consisting of any combination of carcass weights, provided, however, that when used in reference to boxed lamb cuts sales, the term 'carlot-based' means any transaction between a buyer and a seller consisting of 1,000 pounds or more of one or more individual boxed lamb items."

AMS is proposing to establish the 1,000 pound threshold as the level dividing the majority of carlot-based sales from distributive-based sales. AMS believes that the 1,000 pound threshold would limit the submission of information on boxed lamb cut sales to more significant sales allowing AMS to publish more accurate and timely information on the boxed lamb cuts market while reducing the submission of information by covered lamb packers.

In the LMR regulations, the term "importer" (7 CFR 59.300) is defined as, "any person engaged in the business of importing lamb meat products that takes ownership of such lamb meat products with the intent to sell or ship in U.S. commerce. For any calendar year, the term includes only those that imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years. Additionally, the term includes those that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years, if USDA determines that the person should be considered an importer based on their volume of lamb imports."

Because imported products comprise over one-third of the U.S. market (based on U.S. Census Bureau data, 66,882 metric tons in 2002) and can affect prices for domestic lamb, lamb importers were included for more complete information on lamb meat products being imported into the U.S., including the types, quantities, and prices of these products.

In the comment period prior to the publication of the final rule for the LMR program, AMS received five comments expressing concern that the lamb import threshold of 5,000 metric tons and the domestic lamb packer threshold of an average 75,000 head per year for each of the preceding 5 years were not comparable. These commenters believed that the threshold for lamb importers was set too high in relation to the domestic packer threshold and should be lowered to ensure adequate coverage of the imported lamb market. At that time, AMS expressed concern that lowering the threshold would increase the number of smaller importers that would be required to report. AMS believed that the products imported by many of these operations were so unique that AMS would be unable to report them without disclosing proprietary information. AMS expected that the 5,000 metric ton lamb importer threshold would cover a comparable percentage of the lamb imports as slaughter and processing are being covered by the cattle, swine and lamb packer definitions, or approximately 80% of lamb imported into the U.S.

During the period since the implementation of the LMR program on April 2, 2001, AMS has determined that the 5,000 metric ton provision limits the number of covered importers to a level below that which is necessary to ensure confidentiality of published information. As a result, AMS has been unable to publish market information on sales of imported boxed lamb cuts.

When AMS formulated its initial estimates on the number of importers that would be required to report under LMR, it was anticipated that six companies would meet the 5,000 metric ton threshold. However, after implementation of the LMR program, it was determined that the 5,000 metric ton threshold did not cover a sufficient number of lamb importers necessary to publish market information on imported lamb in accordance with the confidentiality provisions of the Act. After analyzing U.S. Customs Service data for total lamb imported for each of the 5 years between 1998 and 2002, AMS believes that the proposed 2,500 metric ton threshold would cover eight lamb importers which would allow AMS to collect and publish market reports on the imported boxed lamb cuts market in accordance with the confidentiality provisions of the Act.

AMS proposes amending the definition of "importer" to lower the existing 5,000 metric ton provision to 2,500 metric tons. This proposal would amend the definition of "importer" to read, "The term 'importer' means any

person engaged in the business of importing lamb meat products who takes ownership of such lamb meat products with the intent to sell or ship in U.S. commerce. For any calendar year, the term includes only those that imported an average of 2,500 metric tons of lamb meat products per year during the immediately preceding 5 calendar years. Additionally, the term includes those that did not import an average of 2,500 metric tons of lamb meat products during the immediately preceding 5 calendar years, if USDA determines that the person should be considered an importer based on their volume of lamb imports.

The establishment of the 2,500 metric tons provision would be more consistent with the 75,000 head provision defining a lamb packer for purposes of livestock mandatory reporting. The 2,500 metric ton provision is equal to approximately 5.5 million pounds of lamb meat product ( $2,500 \times 2204.6 = 5,511,500$  pounds). The 75,000 head provision is equal to approximately 5.3 million pounds of lamb meat product based upon an average lamb carcass weight of 71 pounds (National Agricultural Statistics Service data for 2001) ( $75,000 \times 71 = 5,325,000$  pounds).

AMS welcomes written comments on the proposed changes. All comments will become a matter of public record.

#### **Executive Orders 12866 and 12988**

Although not economically significant, this proposed rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB). Regulations must be designed in the most cost-effective manner possible to obtain the regulatory objective while imposing the least burden on society. AMS has prepared a Regulatory Impact Assessment (RIA) consisting of a statement of the need for the proposed action, an examination of alternative approaches, and an analysis of the benefits and costs.

*Need for Proposed Action.* As stated in the background section, the current definition of carlot-based in the LMR regulations has resulted in requiring nearly all sales of boxed lamb cuts to be reported, including distributive-based transactions. It was not the Agency's intent to include this type of information in the LMR program as it may have created a perception of wide price ranges in market reports for boxed lamb cuts and could send misleading signals to producers and packers as to the true direction of the market.

AMS believes that amending the boxed lamb cuts portion of the definition of "carlot-based" by limiting reportable sales of boxed lamb cuts to those consisting of 1,000 pounds or more of one or more individual boxed lamb items would limit the submission of information on boxed lamb cut sales to significant sales, thus allowing AMS to publish more accurate and reliable market information and reduce the submission of information by covered lamb packers.

The current definition of "importer" in the LMR regulations has also resulted in difficulties in reporting market information on sales of imported boxed lamb cuts. For any calendar year, the term "importer" includes only those that import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years. AMS expected that the 5,000 metric ton threshold would cover a comparable percentage of lamb imports as slaughter and processing are being covered by the cattle, swine, and lamb packer definitions, or approximately 80% of lamb imported into the U.S. However, this has not been the case. When this program was initially implemented, only two importers would have been covered under the LMR program which hindered AMS' ability to collect and publish market information on imported boxed lamb cuts.

AMS believes that amending the definition of importer to lower the existing 5,000 metric ton threshold to 2,500 metric tons would now cover eight lamb importers and would allow AMS to collect and publish market reports on the imported boxed lamb cuts market.

*Alternatives.* Various methods were considered by which the objectives of the rule could be accomplished. The Agency looked at other ways of defining carlot-based such that distributive-sales would not be covered, including using 500 pounds as the threshold. However, after discussions with lamb industry packers and processors, AMS believes that a 500 pound threshold could result in the inclusion of products for which prices could be established on factors other than the market value and that a 1,000 pound threshold would be a more accurate dividing line between carlot-based sales and distributive-based sales.

The Agency also looked at other ways of defining the term importer. AMS received several comments in the comment period prior to the publication of the final LMR regulations which supported a threshold of 2,500 metric tons in defining an importer. At that time, AMS believed that this level would preclude AMS from reporting a

significant number of transactions due to confidentiality guidelines. However, AMS now believes that lowering the threshold to 2,500 metric tons would cover eight importers which is a sufficient number of importers to allow AMS to publish market information without disclosing proprietary information.

*Summary of Benefits.* This proposal would allow AMS to collect and publish market reports on the imported boxed lamb cuts market. As imports account for over one-third of the U.S. market and can greatly impact the prices for domestic lamb, implementation of this rule would enable participants to better evaluate market conditions and make more informed marketing decisions, thus improving the reporting services of AMS.

*Summary of Costs.* In the final LMR regulations (65 FR 75464), AMS prepared a complete cost analysis of the LMR program. This amendment is not anticipated to substantially change these prior estimates. AMS estimates that the total annual burden on each small lamb importer would remain at \$2,070, including \$87 for annual costs associated with electronically submitting data, \$150 for annual share of initial startup costs of \$750, and \$1,830 for the storage and maintenance of electronic files that were submitted to AMS. AMS estimates that the total annual burden on each small lamb packer would remain at \$7,860, including \$5,875 for annual costs associated with electronically submitting data, \$150 for annual share of initial startup costs of \$750, and \$1,830 for the storage and maintenance of electronic files that were submitted to AMS. The estimate of the number of importers that would be required to report would increase from six to eight.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform, and is not intended to have retroactive effect. States and political divisions of States are specifically preempted by § 259 of the Act from imposing requirements in addition to, or inconsistent with, any requirements of the Act with respect to the submission or publication of information on the prices and quantities of livestock or livestock products. Further, the Act does not restrict or modify the authority of the USDA to administer or enforce the Packers and Stockyards Act, 1921 [7 U.S.C. 181 *et seq.*]; administer, enforce, or collect voluntary reports under the Act or any other laws; or access documentary evidence as provided under sections 9 and 10 of the Federal Trade Commission Act [15 U.S.C. 49, 50]. There are no

administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

### Civil Rights Review

In promulgating the final LMR regulations (65 FR 75464), AMS considered the potential civil rights implications on minorities, women, or persons with disabilities and prepared a Civil Rights Impact Analysis to ensure that no person or group shall be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or family status.

The proposed amendments to the LMR regulations do not alter any of the findings of the Civil Rights Impact Analysis on the LMR regulations.

### Regulatory Flexibility Act

This proposed rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*]. The purpose of the RFA is to consider the economic impact of a rule on small business entities. Alternatives, which would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace have been evaluated. Regulatory action should be appropriate to the scale of the businesses subject to the action. The collection of information is necessary for the proper performance of the functions of AMS concerning the mandatory reporting of livestock information. The Act (7 U.S.C. 1635–1636) requires AMS to collect and publish livestock market information. The required information is only available directly from those entities required to report under the Act and by the LMR regulations and exists nowhere else. Therefore, the LMR regulations do not duplicate market information reasonably accessible to the Agency.

In formulating this proposed rule, particular consideration was given to reducing the burden on entities while still achieving the objectives of the LMR regulations. Accordingly, proposed thresholds were set which would redefine those sales transactions considered to be “carlot-based” and therefore required to be reported under the LMR program, and those entities which would be required to report information on sales of imported boxed lamb cuts including applicable branded product.

The proposal would require packers to report information on carlot-based sales transactions of boxed lamb cuts consisting of 1,000 pounds or more of one or more individual boxed lamb

items. The definition of “carlot-based” would be amended to read, “The term “carlot-based”, when used in reference to lamb carcass sales, means any transaction between a buyer and a seller destined for three or less delivery stops consisting of any combination of carcass weights. When used in reference to boxed lamb cuts sales, the term “carlot-based” means any transaction between a buyer and a seller consisting of 1,000 pounds or more of one or more individual boxed lamb items.”

Additionally, the proposal would also require importers that imported an average of 2,500 metric tons of lamb meat products per year to report information on sales transactions of boxed lamb cuts. The definition of “importer” would be amended to read, “For any calendar year, lamb importers that imported an average of 2,500 metric tons of lamb meat products per year during the immediately preceding 5 calendar years would be required to report. Additionally, lamb importers that did not import an average of 2,500 metric tons of lamb meat products during the immediately preceding 5 calendar years if the USDA determines that the person should be considered an importer based on the volume of lamb imports are required to report.”

Implementation of the proposed amendment redefining the term “carlot-based” would not change the number of entities required to submit information on sales of boxed lamb cuts under the LMR regulations.

Implementation of the proposed amendment redefining the term “importer” would slightly increase the original estimate of the number of lamb importers required to submit information on sales of imported boxed lamb cuts under the LMR regulations. After analyzing the U.S. Customs Service data for total lamb imported into the U.S. by importer for each of the 5 years between 1998 and 2002, AMS believes that the 2,500 metric ton threshold would now cover eight importers of lamb into the U.S. (one importer is also a packer).

Accordingly, we also have prepared a regulatory flexibility analysis. The RFA compares the size of meat packing plants to the Standard Industrial Code (SIC) established by the Small Business Administration (SBA) [13 CFR 121.201] to determine the percentage of small businesses within the meat packing industry and the wholesale meat products trade, including importers. Under these size standards, meat packing companies with 500 or less employees are considered small business entities (SIC 2011) and lamb importers with 100 or less employees

are considered small business entities (SIC 5147).

The objective of this proposed rule is to improve the price and supply reporting services of USDA. AMS believes that this objective can be accomplished by amending the definitions of the terms “carlot-based” and “importer” in the LMR regulations.

The LMR regulations provide for the mandatory reporting of market information by livestock packers who for any calendar year have slaughtered a certain number of livestock during the immediately preceding 5 calendar years. Lamb plants required to report include those that for any calendar year slaughter or process the equivalent of 75,000 head per year during the immediately preceding 5 calendar years. Additionally, for any calendar year lamb importers that imported an average of 5,000 metric tons of lamb meat products per calendar year during the immediately preceding 5 calendar years are also required to report details of their purchases. Additionally, lamb packers and lamb meat processors and importers that did not slaughter or process the equivalent of 75,000 head per year or import 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years are required to report if the USDA determines that they should be considered an importer based on their volume of lamb imports. This proposed rule would amend the LMR regulations to redefine those entities considered as importers by changing the 5,000 metric ton provision to 2,500 metric tons.

These packers and importers are required to report the details of all transactions involving domestic sales of boxed lamb cuts including applicable branded product, and imported boxed lamb cuts including applicable branded product to AMS. Lamb information is reported to AMS according to the schedule mandated by the LMR regulations with sales of boxed lamb cuts reported once each day. Previous week sales of imported boxed lamb cuts including applicable branded boxed lamb cuts are reported once weekly on the first reporting day of the week.

For any calendar year, lamb packers required to report include those that slaughtered or processed the equivalent of 75,000 head per year during each of the immediately preceding 5 calendar years. Also included are processing plants that did not slaughter or process an average of 75,000 lambs during the immediately preceding 5 calendar years but are determined to be a packer by USDA based on the capacity of the processing plant. For any calendar year, an importer that imported an average of

2,500 metric tons of lamb meat products per year during the immediately preceding 5 calendar years would be required to report under this proposed rule. Additionally, a lamb importer that did not import an average of 2,500 metric tons of lamb meat products during the immediately preceding 5 calendar years would also be required to report under this proposed rule if USDA determines that the person should be considered an importer based on the volume of lamb imports. Under this proposal, 20 individual plants including importers would be required to report information on boxed lamb sales. Based on the criteria established by the SBA to classify small businesses (SIC 2011 and 5147), all 20 of these lamb plants and importers would be considered small businesses with no lamb packer employing more than 500 people and no lamb importer employing more than 100 people. The figure of 20 lamb packer and importer plants required to report represents approximately 3.0% of the lamb plants and importers in the U.S. Nearly all of the remaining approximately 97.0% of lamb plants and importers would be considered small businesses and would be exempt from mandatory reporting.

The LMR regulations require the reporting of specific market information regarding the buying and selling of livestock and livestock products. The information is reported to AMS by electronic means and the adoption of the proposed rule would not affect this requirement. Electronic reporting involves the transfer of data from a packer's or importer's electronic recordkeeping system to a centrally located AMS electronic database. The packer or importer is required to organize the information in an AMS-approved format before electronically transmitting the information to AMS.

Once the required information has been entered into the AMS database, it is aggregated and processed into various market reports which are released according to the daily and weekly time schedule set forth in the LMR regulations. As an alternative, AMS also developed and made available web-based input forms for submitting data online as AMS found that some of the smaller entities covered under mandatory price reporting would benefit from such a web-based submission system.

In the LMR regulations, AMS estimated the total annual burden on each small lamb packer to be \$7,860 including \$5,875 for annual costs associated with electronically submitting data, \$150.00 for annual share of initial startup costs of \$750, and

\$1,830 for the storage and maintenance of electronic files that were submitted to AMS. AMS estimated the total annual burden on each small importer of lamb to be \$2,070 including \$87 for annual costs associated with electronically submitting data, \$150.00 for annual share of initial startup costs of \$750, and \$1,830 for the storage and maintenance of electronic files that were submitted to AMS.

This proposed rule does not substantially change these prior estimates. While adjusting the 5,000 metric ton provision that establishes those lamb importers covered under the LMR regulations to 2,500 metric tons increases the number of lamb importers required to report to eight, the estimated annual cost burden per importer of \$2,070 remains the same. Amending the definition for the term "carlot-based" by limiting covered sales of boxed lamb cuts to those consisting of 1,000 pounds or more of one or more individual boxed lamb items would be expected to lessen the number of covered sales transactions that are submitted to AMS. However, AMS's submission burden estimates were based on lamb packers and importers using electronic reporting methods to automatically compile and submit required information. AMS believes the burden savings resulting from electronically compiling and submitting a reduced number of sales transactions to be negligible considering that the speed of electronic systems is measured in milliseconds.

Each packer and importer required to report information to USDA must maintain such records as are necessary to verify the accuracy of the information provided to AMS. This includes information regarding price, class, head count, weight, quality grade, yield grade, and other factors necessary to adequately describe each transaction. These records are already kept by the industry. Reporting packers and importers are required by the LMR regulations to maintain and to make available the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock. Reporting packers and importers are also required to maintain copies of the information provided to AMS. All of the above-mentioned paperwork must be kept for at least 2 years. Packers and importers are not required to report any other new or additional information that they do not generally have available or maintain. Further, they are not required to keep any information that would prove

unduly burdensome to maintain. The paperwork burden that is imposed on the packers and importers is further discussed in the section entitled Paperwork Reduction Act that follows.

In addition, AMS has not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this proposed rule.

Professional skills required for recordkeeping under the LMR regulations are not different than those already employed by the reporting entities. Reporting is accomplished using computers or similar electronic means. This proposed rule does not affect the professional skills required for recordkeeping.

The LMR regulations require lamb slaughter and processing plants and lamb importers of a certain size to report information to the USDA at prescribed times throughout the day and week. The LMR regulations already exempt many small businesses by the establishment of daily slaughter, processing, and import capacity thresholds. Based on figures published by the National Agricultural Statistics Service, there were 538 lamb federally inspected slaughter plants operating in the U.S. at the end of 2001. The LMR regulations require 20 lamb packers and importers to report information (approximately 2% of all federally inspected lamb plants and approximately 1% of all lamb importers). Therefore, approximately 98% of all lamb packers and approximately 99% of lamb importers are not required to report. As discussed earlier, this proposed rule does not change this requirement.

With regard to alternatives, if the definitions of importer and carlot-based are not changed, AMS would continue to be hindered in reporting more accurate and reliable information on sales of imported and domestic boxed lamb cuts.

AMS will continue to work actively with those small businesses required to report to minimize the burden on them to the maximum extent practicable.

#### **Paperwork Reduction Act**

In accordance with OMB regulation (5 CFR Part 1320) that implements the Paperwork Reduction Act (44 U.S.C. Chapter 35), the information collection has been previously approved by OMB and assigned OMB control number 0581-0186. A revised information collection package has been submitted to OMB for approval of a 15 hour increase in total burden hours.

The purpose of this proposed rule is to amend the LMR regulations (65 FR 75464) to modify the requirement for

the submission of information on domestic and imported boxed lamb cuts sales. All other provisions of the LMR regulations will remain the same. Adjusting the 5,000 metric ton provision that establishes those lamb importers covered under the LMR regulations to 2,500 metric tons increases the estimated number of lamb importers required to report from six to eight. This change will not substantially impact the overall total burden hours. The estimated annual cost burden per importer of \$2,070 remains the same. Amending the definition for the term "carlot-based" by limiting covered sales of boxed lamb cuts to those consisting of 1,000 pounds or more of one or more individual boxed lamb items would be expected to lessen the number of covered sales transactions required to be submitted to AMS. However, AMS's submission burden estimates were based on lamb packers and importers using electronic reporting methods to automatically compile and submit required information. AMS believes the burden savings resulting from electronically compiling and submitting a reduced number of sales transactions to be negligible considering that the speed of electronic systems is measured in milliseconds.

AMS is committed to implementation of the Government Paperwork Elimination Act which provides for the use of information resources to improve the efficiency and effectiveness of governmental operations, including providing the public with the option of submitting information or transacting business electronically to the extent practicable.

#### List of Subjects in 7 CFR Part 59

Lamb, Livestock, Reporting, Importer.

For the reasons set forth in the preamble, Chapter I, of Title 7 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 59—LIVESTOCK MANDATORY REPORTING

1. The authority citation for part 59 continues to read as follows:

**Authority:** 7 U.S.C. 1621 et. seq.

#### Subpart D—Lamb Reporting

##### § 59.300 [Amended]

2. The definition of the term *Carlot-based* is revised to read as follows:

The term *Carlot-based* when used in reference to lamb carcass sales means any transaction between a buyer and a seller destined for three or more delivery stops consisting of any combination of carcass weights. When

used in reference to boxed lamb cuts sales, the term *Carlot-based* means any transaction between a buyer and a seller consisting of 1,000 pounds or more of one or more individual boxed lamb items.

3. In the definition of the term *Importer*, the number "5,000" is revised to read "2,500" each time it appears.

Dated: October 21, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03-27015 Filed 10-24-03; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 966

[Docket No. FV03-966-4 PR]

#### Tomatoes Grown in Florida; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Florida Tomato Committee (Committee) for the 2003-2004 and subsequent fiscal periods from \$.02 to \$.025 per 25-pound container or equivalent of tomatoes handled. The Committee locally administers the marketing order which regulates the handling of tomatoes grown in Florida. Authorization to assess tomato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by November 26, 2003.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, FL 33884-1671; telephone: (863) 324-3375; Fax: (863) 325-8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida tomato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable tomatoes beginning on August 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the