

# 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 1230

[No. LS-98-004]

#### Pork Promotion, Research, and Consumer Information Order—Decrease in Importer Assessments

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Pork Promotion, Research, and Consumer Information Act (Act) of 1985 and the Pork Promotion, Research, and Consumer Information Order (Order) issued thereunder, this proposed rule would decrease by one-hundredth of a cent per pound the amount of the assessment per pound due on imported pork and pork products to reflect a decrease in the 1997 five-market average price for domestic barrows and gilts. This proposed action would bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals. These proposed changes will facilitate the continued collection of assessments on imported porcine animals, pork, and pork products.

**DATES:** Comments must be received by July 13, 1998.

**ADDRESSES:** Send two copies of comments to Ralph L. Tapp, Chief, Marketing Programs Branch, STOP 0251; Livestock and Seed Program, Agricultural Marketing Service (AMS), USDA, 1400 Independence Ave., SW; Washington, D.C. 20250-0251. Comments will be available for public inspection during regular business hours at the above office in Room 2606 South Building; 14th and Independence Avenue, SW., Washington, D.C. 20090-6456.

#### FOR FURTHER INFORMATION CONTACT:

Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720-1115.

#### SUPPLEMENTARY INFORMATION:

#### Executive Orders 12866 and 12778 and Regulatory Flexibility Act

This proposed rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

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 Secretary 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 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 Secretary 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 Secretary'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 (RFA) (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 1,000 importers may be classified as small entities under

the Small Business Administration definition (13 CFR 121.601).

This proposed rule would decrease the amount of assessments on imported pork and pork products subject to assessment by one-hundredth of a cent per pound, or as expressed in cents per kilogram, two-hundredths of a cent per kilogram. This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 1997. The average annual market price decreased from \$52.77 in 1996 to \$51.30 in 1997, a decrease of about 3 percent. Adjusting the assessments on imported pork and pork products would result in an estimated decrease in assessments of \$48,000 over a 12-month period. Assessments collected for 1997 were \$3,369,587. Accordingly, the Administrator of AMS has determined that this action would 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 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 an equivalent amount of assessment on imported porcine animals, pork, and pork products. However, that rate was increased to 0.35 percent in 1991 (56 FR 51635) and to 0.45 percent effective September 3, 1995 (60 FR 29963). 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, and 62 FR 26205) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay U.S. Customs Service (USCS), upon importation, the assessment of 0.45 percent of the 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 products were produced. This proposed rule would decrease the assessments on all of the imported pork

and pork products subject to assessment as published in the **Federal Register** as a final rule May 13, 1997, and effective on June 12, 1997; (62 FR 26205). This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 1997 as reported by USDA, AMS, Livestock and Grain Market News (LGMN) Branch. This decrease in assessments would make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent decrease in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This proposed rule would not change the current assessment rate of 0.45 percent of the market value.

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 Statistical Bulletin No. 697 "Conversion Factors and Weights and Measures." 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 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as reported by USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.45 percent 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.

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 annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

The average annual market price decreased from \$52.77 in 1996 to \$51.30 in 1997, a decrease of about 3 percent. This decrease would result in a corresponding decrease in assessments for all HTS numbers listed in the table in § 1230.110, 62 FR 26205; May 13, 1997, of an amount equal to one-hundredth of a cent per pound, or as expressed in cents per kilogram, two-hundredths of a cent per kilogram. Based on the most recent available Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products available for the period January 1, 1997, through September 30, 1997, the proposed decrease in assessment amounts would result in an estimated \$48,000 decrease in assessments over a 12-month period.

This proposed rule provides for a 30-day comment period. This comment period is appropriate because the proposed rule simply provides for an adjustment in the per pound assessment levels on imported pork and pork products to reflect changes in live hog prices which occurred from 1996 to 1997. These live hog prices form the basis for the assessments. This adjustment, if adopted, should be made effective as soon as possible to promote optimum equity.

**List of Subjects in 7 CFR Part 1230**

Administrative practice and procedure, Advertising, Agricultural 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 follows:

**PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION**

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

**Authority:** 7 U.S.C. 4801–4819.

**Subpart B—[Amended]**

2. Section 1230.110 is revised to read as follows:

**§ 1230.110 Assessments on imported pork and pork products.**

(a) The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.0000 .....	10.45
0103.91.0000 .....	<sup>1</sup> 0.45
0103.92.0000 .....	10.45

<sup>1</sup> 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 ....	.33	.727518
0203.12.1010 ....	.33	.727518
0203.12.1020 ....	.33	.727518
0203.12.9010 ....	.33	.727518
0203.12.9020 ....	.33	.727518
0203.19.2010 ....	.38	.837748
0203.19.2090 ....	.38	.837748
0203.19.4010 ....	.33	.727518
0203.19.4090 ....	.33	.727518
0203.21.0000 ....	.33	.727518
0203.22.1000 ....	.33	.727518
0203.22.9000 ....	.33	.727518
0203.29.2000 ....	.38	.837748
0203.29.4000 ....	.33	.727518
0206.30.0000 ....	.33	.727518
0206.41.0000 ....	.33	.727518
0206.49.0000 ....	.33	.727518
0210.11.0010 ....	.33	.727518
0210.11.0020 ....	.33	.727518
0210.12.0020 ....	.33	.727518
0210.12.0040 ....	.33	.727518
0210.19.0010 ....	.38	.837748
0210.19.0090 ....	.38	.837748
1601.00.2010 ....	.46	1.014116
1601.00.2090 ....	.46	1.014116
1602.41.2020 ....	.50	1.102300
1602.41.2040 ....	.50	1.102300
1602.41.9000 ....	.33	.727518
1602.42.2020 ....	.50	1.102300
1602.42.2040 ....	.50	1.102300
1602.42.4000 ....	.33	.727518
1602.49.2000 ....	.46	1.014116
1602.49.4000 ....	.38	.837748

Dated: June 8, 1998.

**Barry L. Carpenter,**  
*Deputy Administrator, Livestock and Seed Program.*

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**NORTHEAST DAIRY COMPACT COMMISSION**

**7 CFR Parts 1301, 1304 and 1306**

**Over-Order Price Regulation**

**AGENCY:** Northeast Dairy Compact Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Northeast Dairy Compact Commission proposes to amend the current Compact Over-order Price Regulation to exclude milk from the pool which is either diverted or