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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1230

[No. LS-99-03]

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

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

**ACTION:** Final 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 final rule decreases by sixteen-hundredths 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 1998 five-market average price for domestic barrows and gilts. This action brings 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 changes will facilitate the continued collection of assessments on imported porcine animals, pork, and pork products.

**EFFECTIVE DATE:** September 16, 1999.

**FOR FURTHER INFORMATION CONTACT:** Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720-1115.

#### SUPPLEMENTARY INFORMATION:

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

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This 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 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 such 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 final rule decreases the amount of assessments on imported pork and pork products subject to assessment by sixteen-hundredths of a cent per pound, or as expressed in cents per kilogram, thirty-five-hundredths of a cent per kilogram. This decrease is consistent with the decrease in the annual price of domestic barrows and gilts for calendar year 1998. The average annual market price decreased from \$51.30 per

hundredweight in 1997 to \$31.82 per hundredweight in 1998, a decrease of about 38 percent. Adjusting the assessments on imported pork and pork products would result in an estimated decrease in assessments of \$888,000 over a 12-month period. Assessments collected for 1998 were \$3,834,656. 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 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 29962). 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 29962, 60 FR 33681, and 60 FR 58501) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay the 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 final rule decreases the assessments on all of the imported pork and pork products subject to assessment as published in the **Federal Register** as a final rule August 28, 1998, and effective September 28, 1998; (63 FR 45935). This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 1998 as reported by USDA, AMS, Livestock and Grain Market News (LGMN) Branch. This decrease in assessments will 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 final rule will 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 \$51.30 in 1997 to \$31.82 in 1998, a decrease of about 38 percent. This decrease will result in a corresponding decrease in assessments

for all HTS numbers listed in the table in § 1230.110, 63 FR 45935; August 28, 1998, of an amount equal to sixteen-hundredths of a cent per pound, or as expressed in cents per kilogram, thirty-five-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, 1998, through December 31, 1998, the decrease in assessment amounts would result in an estimated \$888,000 decrease in assessments over a 12-month period.

On June 10, 1999, AMS published in the **Federal Register** (64 FR 31158) a proposed rule which would decrease the per pound assessment on imported pork and pork products consistent with decreases in the 1998 average prices of domestic barrows and gilts to provide comparability between imported and domestic assessments. The proposal was published with a request for comments by July 12, 1999. No comments were received.

Accordingly, this final rule establishes the new per-pound and per-kilogram assessments on imported pork and pork products.

#### 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, 7 CFR part 1230 is 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. In § 1230.110 paragraph (b) is revised to read as follows:

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

\* \* \* \* \*

(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 .....	.20	.440920
0203.12.1010 .....	.20	.440920
0203.12.1020 .....	.20	.440920
0203.12.9010 .....	.20	.440920

Pork and pork products	Assessment	
	Cents/lb	Cents/kg
0203.12.9020 .....	.20	.440920
0203.19.2010 .....	.24	.529104
0203.19.2090 .....	.24	.529104
0203.19.4010 .....	.20	.440920
0203.19.4090 .....	.20	.440920
0203.21.0000 .....	.20	.440920
0203.22.1000 .....	.20	.440920
0203.22.9000 .....	.20	.440920
0203.29.2000 .....	.24	.529104
0203.29.4000 .....	.20	.440920
0206.30.0000 .....	.20	.440920
0206.41.0000 .....	.20	.440920
0206.49.0000 .....	.20	.440920
0210.11.0010 .....	.20	.440920
0210.11.0020 .....	.20	.440920
0210.12.0020 .....	.20	.440920
0210.12.0040 .....	.20	.440920
0210.19.0010 .....	.24	.529104
0210.19.0090 .....	.24	.529104
1601.00.2010 .....	.28	.617288
1601.00.2090 .....	.28	.617288
1602.41.2020 .....	.31	.683426
1602.41.2040 .....	.31	.683426
1602.41.9000 .....	.20	.440920
1602.42.2020 .....	.31	.683426
1602.42.2040 .....	.31	.683426
1602.42.4000 .....	.20	.440920
1602.49.2000 .....	.28	.617288
1602.49.4000 .....	.24	.529104

Dated: August 11, 1999.

**Barry L. Carpenter,**

*Deputy Administrator, Livestock and Seed Program.*

[FR Doc. 99–21303 Filed 8–16–99; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

#### Food Safety and Inspection Service

#### 9 CFR Parts 318 and 319

[Docket No. 94–015N]

RIN 0583–AB82

#### Use of Soy Protein Concentrate, Modified Food Starch, and Carrageenan as Binders in Certain Meat Products

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Affirmation of effective date for direct final rule.

**SUMMARY:** On May 24, 1999, the Food Safety and Inspection Service (FSIS) published a direct final rule, "Use of Soy Protein Concentrate, Modified Food Starch, and Carrageenan as Binders in Certain Meat Products" (64 FR 27901). This direct final rule notified the public of FSIS's intention to amend the Federal meat inspection regulations to allow the use of soy protein concentrate, both singly and in combination with