

# Proposed Rules

Federal Register

Vol. 68, No. 49

Thursday, March 13, 2003

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-02-15]

#### Pork Promotion, Research, and Consumer Information Program: Submission of Information

**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) issued thereunder, this proposed rule would add a section to the regulations that implement the Order to require remitters of pork checkoff assessments, upon request by the Department of Agriculture (USDA), to submit to the Agricultural Marketing Service (AMS) the names, addresses, and any other information deemed necessary to identify persons from whom assessments were collected. This action is necessary in order to obtain the information necessary to conduct a survey of eligible producers and importers no earlier than June 2003 to determine if they favor a referendum on the Pork Checkoff Program. AMS agreed to conduct a survey as part of a settlement of litigation against USDA filed by the Michigan Pork Producers Association (MPPA) and the National Pork Producers Council. The information that would be collected through this action would be used to establish the total number of pork producers and importers that would be utilized in determining whether the 15 percent threshold requirement contained in the Act for conducting a referendum has been met.

**DATES:** Written comments on this proposed rule must be received by May 12, 2003.

**ADDRESSES:** Send copies of comments to Kenneth R. Payne, Chief; Marketing Programs Branch, Room 2638-S; Livestock and Seed Program; Agricultural Marketing Service, USDA; STOP-0251; 1400 Independence Avenue, SW.; Washington, DC 20250-0251. Comments may also be sent by e-mail to [porkcomments@usda.gov](mailto:porkcomments@usda.gov) or by fax to 202/720-1125. State that your comments refer to Docket No. LS-02-15. Comments received may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, or on the Internet at [www.ams.usda.gov/lsg/mpb/rp-pork.htm](http://www.ams.usda.gov/lsg/mpb/rp-pork.htm).

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35)(PRA), also send comments regarding the merits of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the information collection requirements contained in this proposed rule should also be sent to the Offices of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503, Attention: Desk Officer for Agriculture.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Payne, Chief, Marketing Programs Branch on 202/720-1115, fax 202/720-1125, or by e-mail at [kenneth.payne@usda.gov](mailto:kenneth.payne@usda.gov).

#### SUPPLEMENTARY INFORMATION:

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

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

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It 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, USDA would rule on the petition. The Act provides that the district court of the United States in the district in which the person resides or does business has jurisdiction to review USDA's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*), AMS has considered the economic effect of this proposed action on small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened. The National Pork Board (Board), which receives the pork checkoff assessments, estimated that in calendar year 2001, there were approximately 3,173 entities that remitted pork checkoff assessments. Many of these entities which include packers, auction markets, county fairs, and individual pork producers should be classified as small entities under the criteria established by the Small Business Administration (SBA)(13 CFR 121.201). SBA defines small agricultural producers as those having annual receipts of less than \$750,000, small agricultural service firms as those whose annual receipts are less than \$5 million, and small meat packers as those that have less than 500 employees.

This proposed rule would require, upon request by USDA, remitters of pork checkoff assessments to submit to AMS the names, addresses, and any other information deemed necessary to identify persons from whom assessments were collected. This information would be available from existing records. The information collection requirements, as discussed