

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