

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.

Regulatory Flexibility Act

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 500 importers may be classified as small entities under the Small Business Administration definition (13 CFR 121.201).

This proposed rule would decrease the amount of assessments on imported pork and pork products subject to assessment by five-hundredths to seven-hundredths of a cent per pound, or as expressed in cents per kilogram, eleven-hundredths to fifteen-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 2002. The average annual market price decreased from \$45.87 in 2001 to \$37.09 in 2002, a decrease of about 20 percent. Adjusting the assessments on imported pork and pork products would result in an estimated decrease in assessments of approximately \$562,000 over a 12-month period. Assessments collected on imported hogs, pork, and pork products for 2002 were \$4,250,578. 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 on imported porcine animals with an equivalent assessment on pork and pork products. However, that rate was increased to 0.35 percent in 1991 (56 FR 51635), to 0.45 percent effective September 3, 1995 (60 FR 29963), and then decreased to 0.40 percent effective September 30, 2002 (67 FR 58320). 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, 62 FR 26205, 63 FR 45936, 64 FR 44643, 66 FR 67071, and 67 FR 58320) 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 0.40 percent of the animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.40 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 imported pork and pork products subject to assessment as published in the **Federal Register** as a final rule September 16, 2002, and effective on September 30, 2002 (67 FR 58320). This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 2002 as calculated by the Department of Agriculture's (Department), 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 0.40 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 that are published in the Department's Agricultural Handbook 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 74 percent, which is the average dressing percentage of porcine animals in the United States as recognized by the industry. Thirdly, the equivalent value of the live porcine animals is determined by multiplying the live animal equivalent weight by an

annual average market price for barrows and gilts as calculated by LGMN Branch. Finally, the equivalent value is multiplied by the applicable assessment rate of 0.40 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.

Since 2001, there has been a change in the way LGMN Branch reports hog prices. Due to the implementation of the Livestock Mandatory Price Reporting program, LGMN no longer report hogs on a live basis because most of the industry buys hogs on a carcass basis. Therefore, the annual average market price for barrows and gilts is now derived from the National Daily Direct Hog Price Report (Slaughtered). To convert this figure to a live basis it must be multiplied by 74 percent, the average dressing percentage of porcine animals.

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 rate of assessment or changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic and porcine animals and imported pork and pork products.

The average annual market price decreased from \$45.87 per hundredweight in 2001 to \$37.09 per hundredweight in 2002, a decrease of about 20 percent. This decrease would result in a corresponding decrease in assessments for all HTS numbers listed in the table in § 1230.110(b), 67 FR 58320; September 16, 2002, of an amount equal to five-hundredths to seven-hundredths of a cent per pound, or as expressed in cents per kilogram, eleven-hundredths to fifteen-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 imported during 2002, the proposed decrease in assessment amounts would result in an estimated \$562,000 decrease in assessments over a 12-month period. The assessment rate for imported live hogs is not affected by the change in the cents per pound assessment rate for imported pork and pork products.

In addition, this rule deletes two live porcine animal Harmonized Tariff Schedule (HTS) numbers—0103.91.0000 and 0103.92.0000—and adds five new