

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-98-007]

Pork Promotion and Research

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 specify in the regulations requirements concerning paying and collecting feeder pig and market hog assessments. This proposed action would add a section to the regulations which implement the Order to provide that the producer who sells the animal must remit to the National Pork Board (Board) the assessment due if the purchaser of a feeder pig or market hog fails to collect and remit the assessment.

DATES: Written comments must be received by September 27, 1999.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2627-S; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP 0251; 1400 Independence Avenue, SW; Washington, DC 20250-0251. Comments received may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. State that your comments refer to Docket No. LS-98-007.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, 202/720-1115.

SUPPLEMENTARY INFORMATION:

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

The Department of Agriculture (USDA) is issuing this proposed rule in

conformance with Executive Order 12866.

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, the Secretary 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 the Secretary'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.*). The Administrator of AMS has considered the economic effect of this action on small entities and has determined that this proposed rule will not have a significant economic impact on a substantial number of small business 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.

In the December 29, 1998, issue of "Hogs and Pigs," USDA's National Agricultural Statistics Service estimates that in 1998 the number of operations with hogs in the United States totaled 114,380. The majority of these operations subject to the Order are considered small businesses under the criteria established by the Small

Business Administration. The proposed rule imposes no new burden on the industry. The Act and Order have payment and collection provisions for assessments. This rule further specifies the responsibility for the collection and remittance of assessments on feeder pigs and market hogs in the regulations. This rule would add a section to the regulations to provide that the producer who sells the animal must remit to the Board the assessment due if the purchaser of a feeder pig or market hog fails to collect and remit the assessment.

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implements the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], the information collection requirements contained in this part have been previously approved by OMB and were assigned OMB control number 0851-0093.

Background and Proposed Change

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). Assessments began on November 1, 1986.

For purposes of paying, collecting, and remitting assessments under the Order, porcine animals are divided into three categories: (1) Feeder pigs, (2) market hogs, and (3) breeding stock. Section 1230.71(a) provides that producers producing in the United States a porcine animal raised as a feeder pig, market hog, or for breeding stock, that is sold are to pay an assessment on that animal unless the

producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal in the same category. Section 1230.71(b)(1) provides that purchasers of feeder pigs and market hogs collect assessments on these animals from the producer. Under § 1230.71 producers selling their own breeding stock must remit assessments to the Board. The Order further provides that for the purpose of collecting and remitting assessments on feeder pigs and market hogs, persons engaged as a commission merchant, auction market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer are deemed to be the purchaser. Commission merchants, auction markets, or livestock markets who sell breeding stock on behalf of producers are required to collect and remit assessments.

Collection and remittance of assessments from sales transactions involving market hogs and breeding stock have been highly successful since the assessment collections became effective in 1986. For example, according to the Board's records, assessments are being collected and remitted on 99 percent of all market hogs slaughtered commercially in the United States each year.

Assessment collection and remittance on market hogs has been efficient and successful primarily because of the limited number of purchasers, i.e. meat packers, who purchase hogs from all sizes of production units. This centralization of collection points and their limited number facilitates remittance of assessments to the Board and reduces or eliminates compliance problems. However, in the marketing of feeder pigs, there are significantly greater numbers of purchasers which tend to complicate the collection and remittance process and increase the potential for compliance problems.

The Order contemplates that the producer (seller) will pay the assessment on feeder pigs and the purchaser, who also may be a producer, will collect the assessment due and remit it to the Board. For market hogs, the Order contemplates that the producer (seller) will pay the assessment and the purchaser will collect the assessment due and remit it to the Board.

Due to production and marketing changes within the feeder pig industry, an increasing number of high volume feeder pig production units (producers) are selling feeder pigs to large numbers of producers. Pursuant to § 1230.71(b)(1) each of these producers must collect

assessments from the seller and remit them to the Board. According to the Board, many feeder pig producers, regardless of the size of their operation, simplify payment by remitting the assessment on all feeder pigs they sell to facilitate the collection and remittance of assessments. However, the large number of purchasers involved in feeder pig sales complicates the collection and remittance process and makes compliance difficult.

The primary focus concerning collection and remittance problems on feeder pigs are transactions commonly referred to as farm-to-farm sales of feeder pigs. These sales transactions typically involve two producers. Frequently, producers who purchase feeder pigs may not consider themselves to be purchasers under the Act and Order and consequently neither the seller nor the purchaser collects and/or remits assessments due. This is particularly the case in farm-to-farm feeder pig sales where producer purchasers may not consider themselves as purchasers in such transactions and therefore do not believe they are required to collect and remit assessments to the Board.

To clarify the meaning of a purchaser for the purpose of collection and remittance of assessments for the sale of feeder pigs and also for market hogs and to specify that each producer who sells an animal for the first time as a feeder pig or market hog is obligated to pay the required assessment, this proposed rule would add a new section § 1230.113 to the rules and regulations titled "Collection and Remittance of Assessments for the Sale of Feeder Pigs and Market Hogs." That section would provide that purchasers of feeder pigs or market hogs shall collect assessments from producers if an assessment is due and shall remit those assessments to the Board pursuant to the provisions of § 1230.71. Failure of the purchaser to collect such assessment from a producer shall not relieve the producer of the obligation to pay the assessment. If the purchaser fails to collect the assessment when an assessment is due pursuant to § 1230.71, the producer (seller) shall remit the total amount of assessments due to the Board as set forth in § 1230.111. This proposed change would facilitate enforcement of assessment collection in the Pork Promotion, Research, and Consumer Information Program.

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.

2. Paragraph § 1230.113 would be added to read as follows:

§ 1230.113 Collection and Remittance of Assessments for the Sale of Feeder Pigs and Market Hogs.

Pursuant to the provisions of § 1230.71, purchasers of feeder pigs or market hogs shall collect assessments from producers if an assessment is due and shall remit those assessments to the Board. Failure of the purchaser to collect such assessment from a producer shall not relieve the producer of the obligation to pay the assessment. If the purchaser fails to collect the assessment when an assessment is due pursuant to § 1230.71, the producer (seller) shall remit the total amount of assessments due to the Board as set forth in § 1230.111.

Dated: July 20, 1999.

Barry L. Carpenter,
Deputy Administrator, Livestock and Seed Program.
[FR Doc. 99–19291 Filed 7–27–99; 8:45 am]
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NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

[Docket No. PRM–40–26]

Chromalloy Tallahassee, a Division of Chromalloy Gas Turbine Corporation; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–40–26) submitted by Chromalloy Tallahassee, a division of Chromalloy Gas Turbine Corporation. The petitioner requested that the NRC amend its regulations regarding the exemption from licensing of source material found in 10 CFR 40.13(c)(8), so that the exemption would include finished parts containing nickel-thoria