

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 section 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.

Information available to the Department indicates that nearly all of the estimated 278,000 pork producers and many of the estimated 200 importers can be classified as small entities. This proposed rule would increase the rate of the assessment from 0.35 percent of the market value of porcine animals to 0.45 percent, and would increase the cents per pound and per kilogram of assessments on imported pork and pork products subject to assessment. Adjusting the rate of assessment from 0.35 to 0.45 percent and increasing the assessment on imported pork and pork products would result in an estimated increase in assessments of \$10 million to \$12 million over a 12-month period. However, the gross market value of all swine marketed in the United States during 1993 exceeded \$10.6 billion. The economic impact of the proposed assessments will not be a significant part of the total market value of swine.

This proposed rule also would adjust importer assessments to reflect the increase in the assessment rate from 0.35 to 0.45 percent and to reflect a decrease in the 1994 average market price for domestic barrows and gilts. The combined effect of the assessment rate increase and the decrease in the average market price would increase the assessments on imported pork and pork products subject to assessments by two- to four-hundredths of a cent per pound, or as expressed in cents per kilogram, four- to nine-hundredths of a cent per

kilogram. Adjusting the assessments on imported pork and pork products would result in an estimated increase in assessments of \$175,000 over a 12-month period.

Accordingly, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in part 1230, subparts A and B, have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0851-0151.

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 is funded by an assessment rate of 0.35 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. 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 31896; as corrected, at 51 FR 26283, and amended at 53 FR 1909, and 53 FR 30243). Assessments began on December 1, 1986.

The Order requires that producers pay to the Board an assessment of 0.35 percent of the market value of each porcine animal upon sale. However, for purposes of collecting and remitting assessments, porcine animals are divided into three separate categories (1) feeder pigs, (2) slaughter hogs, and (3) breeding stock. The Order specifies that purchasers of feeder pigs, slaughter hogs, and breeding stock shall collect an assessment on these animals if assessments are due. The Order further provides that for the purpose of collecting and remitting assessments 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 shall be deemed to be a purchaser.

The Order requires importers of porcine animals to pay the U.S. Customs Service (USCS), upon importation, the assessment of 0.35 percent of the porcine animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.35 percent of the market value of the live porcine animals from which such pork and pork products were produced.

The procedures for collection and remittance of assessments are specified in § 1230.71 of the Order.

Pursuant to section 1620 of the Act, the assessment rate of 0.25 percent of the market value of porcine animals, pork, or pork products sold or imported was established in the initial Order and was changed to 0.35 percent on December 1, 1991. Based on the assessment rate of 0.35 percent, the total annual assessments collected during 1994 were approximately \$42 million. Assessments on imported pork and pork products accounted for about \$1.5 million of the total.

The Act and § 1230.71 of the Order contain provisions for increasing the initial rate of assessment. Section 1620(b)(2) of the Act provides that the rate of the assessment in the initial Order may be increased by not more than 0.1 percent per year upon recommendation of the National Pork Producers Delegate Body whose producer and importer members are appointed annually by the Secretary. The Act further provides that the rate of assessment may be increased by no more than 0.1 percent annually not to exceed 0.5 percent of the market value unless the Delegate Body recommends a greater increase and the increase is approved in a referendum.

The 1994 Delegate Body, at its annual meeting on March 3-5, 1994, in Denver, Colorado, voted overwhelmingly to recommend to the Secretary that the rate of assessment of 0.35 percent be increased to 0.45 percent. There were 170 Delegate Body members appointed by the Secretary in 1994. At the Delegate Body meeting 154 delegates were present during voting and voted 37,226 valid share votes. States and importers are allotted one share per \$1,000 of the aggregated amount of assessment collected. There were 31,089 share votes cast in favor of the 0.1 percent increase.

The following example will illustrate the effect of the 0.1 percent increase on a per head basis. Based on the 1994 annual average five market price of \$39.57 per hundredweight for barrows and gilts with an average weight of 248 pounds as reported in the USDA's publication "Livestock, Meat, and Wool Weekly Summary and Statistics" published in January 1995, the total assessment per head at the assessment rate of 0.45 percent would be 44 cents. At the assessment rate of 0.35 percent, the total per-head assessment would be 34 cents. Based on the Delegate Body's recommendation in accordance with § 1230.71(d) of the Order, it is proposed that regulations be issued increasing the rate of assessments from 0.35 to 0.45 percent.