



This document is scheduled to be published in the Federal Register on 03/19/2013 and available online at <http://federalregister.gov/a/2013-06084>, and on FDsys.gov

Billing Code 3410-10

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 20

Export Sales Reporting Requirements

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: USDA published a proposed rule in the **Federal Register** on June 25, 2012, which would have mandated that weekly reporting for pork (fresh, chilled, or frozen muscle cuts/whether or not boxed) and distillers dried grain (DDG) be added to the Export Sales Reporting program (ESR). A final rule was issued to add pork to the ESR, but a decision on DDG was deferred. This document provides for an additional comment period regarding mandatory export sales reporting for DDG.

DATES: Submit comments on the proposed rule on or before [Insert date 30 days after date of publication in the **Federal Register**].

ADDRESSES: We invite you to submit comments as requested in this document. In your comment, include the Regulation Identifier Number (RIN) and volume, date, and page number of this issue of the Federal Register. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail, hand delivery, or courier: Peter W. Burr, Branch Chief, Export Sales Reporting Branch, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue, SW., Washington, DC 20250-1021, STOP

1021; or by email at *Pete.Burr@fas.usda.gov*; or by telephone at (202) 720-3274; or fax to (202) 720-0876.

Comments will be available for inspection online at <http://www.regulations.gov> and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720-2600 (voice and TDD).

Confidentiality: All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or that is inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Peter W. Burr, Branch Chief, Export Sales Reporting Branch, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue, SW., Washington, DC 20250-1021, STOP 1021; or by email at *Pete.Burr@fas.usda.gov*; or by telephone on (202) 720-3274; or by fax (202) 720-0876.

SUPPLEMENTARY INFORMATION:

Background

USDA published a proposed rule in the **Federal Register** on June 25, 2012 (77 FR 37823), which proposed mandating weekly export sales reporting for pork (fresh, chilled, or frozen muscle cuts/whether or not boxed) and DDG to the ESR. Under this proposed rule, all exporters of U.S. pork and DDG would have been required to report, on a weekly basis, information on the export sales of pork and DDG to the Foreign Agricultural Service, USDA. The 60-day public

comment period ended on August 24, 2012. USDA issued a final rule that amended the regulation to add pork to the ESR, but determined that further comments should be solicited regarding DDG.

Five comments mentioned DDG, of which three were favorable and two were unfavorable. One trade association stated: “We believe [adding DDG] would facilitate market transparency and allow our industry and our corn marketing partners with the ability to conduct accurate and timely analysis of U.S. market conditions.” Another commenter stated: “[Adding DDG] would help avoid future price inflation such as we had in 1973/74 when the ‘Great Russian Grain Robbery’ occurred.” Another commenter stated “Having these [DDG] sales brings market transparency which will allow all market participants to digest the data.”

Another trade association expressed concerns about the impacts of adding DDG, stating: “DDGs are traded with highly variable and specific quality terms that differ greatly based on end use. For example, exported DDGs often require a specific color or nutritional profile that’s not necessarily the same as the product that’s traded domestically. Providing export sales reporting may skew the markets viewpoint on domestic sales.” Another commenter stated, “I would question why DDGs are listed to be reported, and other corn milling co-products like Corn Gluten Feed, etc., are not. I would also like to know the compelling reason for the need to have DDGs reported at all?”

Determination to Extend the Public Comment Period on Proposed Rule

Both supporters and opponents’ views appear to have merit. The concerns raised with respect to the potential negative impact that mandatory export sales reporting for DDG would have on the domestic DDG market, especially the view expressed by one of the trade

associations that the reporting information may confuse markets and skew domestic prices, justify an additional comment period.

All comments previously submitted to USDA during the initial comment period will be given full consideration, so there is no need to resubmit these comments. Please provide any available specific information in support of your comments. If after evaluating all the comments received with respect to DDG, USDA determines to add DDG to the exporting reporting requirements, USDA would amend Appendix 1 to Part 20, adding DDG to the list of commodities to be reported, as set forth below.

Executive Order 12866

The proposed rule has been determined to be not significant under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This proposed rule will not have a significant economic impact on small businesses.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with state and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism, by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. This proposed rule neither provides federal financial assistance nor direct federal development; it does not provide either grants or cooperative agreements. Therefore this program is not subject to Executive Order 12372.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988. The provisions of this rule

would not have a preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The rule would not have a retroactive effect. Before any judicial action may be brought forward regarding this rule, all administrative remedies must be exhausted.

Executive Order 13132

The policies contained in this proposed rule would not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor would this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175

This proposed rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” This Executive Order imposes requirements on the development of regulatory policies that have Tribal implications or preempt tribal laws. The policies contained in this rule do not preempt Tribal law.

National Environmental Policy Act

The Administrator has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

Unfunded Mandates Reform Act (Pub. L. 104-4)

Pub. L. 104-4 requires consultation with state and local officials and Indian tribal governments. This proposed rule does not impose an unfunded mandate or any other requirement on state, local, or tribal governments. Accordingly, these requirements are not subject to the provisions of the Unfunded Mandates Reform Act.

Executive Order 12630

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This proposed rule would not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Secretary of Agriculture is requesting comments from all interested individuals and organizations on a proposed revision to the currently approved information collection for this program. This revision includes the proposed change in information collection activities related to the regulatory changes in this rule.

List of Subjects in 7 CFR Part 20

Agricultural commodities, Exports, and Reporting and recordkeeping requirements.

Accordingly, 7 CFR Part 20 is proposed to be amended as follows:

PART 20--EXPORT SALES REPORTING REQUIREMENTS

1. The authority citation for part 20 continues to read as follows:

Authority: 7 U.S.C. 5712.

2. Section 20.4 is amended by revising paragraph (c) to read as follows:

§ 20.4 Definitions.

* * * * *

(c) *Commodity*. Wheat and wheat flour, feed grains, distillers dried grain, oilseeds, cotton, rice, cattle hides and skins, beef and pork, and any products thereof, and any other agricultural commodity the Secretary may designate. "Commodity" shall also mean a commodity having identifying characteristics as described in any announcement issued pursuant to §20.5 such as class(es) of wheat and rice, or staple length(s) of cotton. Mixed wheat shall be

considered to be the predominant wheat class of the blend. This definition excludes commodities to be used for seed which have been treated in such a manner that their use is limited to seed for planting purposes or on which a certificate has been issued by a recognized seed testing laboratory setting forth variety, germination and purity.

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3. Appendix 1 to Part 20 is revised to read as follows:

APPENDIX 1 TO PART 20--COMMODITIES SUBJECT TO REPORTING, UNITS OF MEASURE TO BE USED IN REPORTING, AND BEGINNING AND ENDING DATES OF MARKETING YEARS

Commodity to be reported	Unit of measure to be used in reporting	Beginning of marketing year	End of marketing year
Wheat - Hard red winter	Metric Tons	June 1	May 31
Wheat - Soft red winter	Metric Tons	June 1	May 31
Wheat - Hard red Spring	Metric Tons	June 1	May 31
Wheat - White (incl. Hard and soft white)	Metric Tons	June 1	May 31
Wheat - Durum	Metric Tons	June 1	May 31
Wheat - Products - All wheat flours (including clears) bulgur, semolina, farina, and rolled, cracked and crushed wheat	Metric Tons	June 1	May 31
Barley - Unmilled (including feed and	Metric Tons	June 1	May 31

hull-less waxy barley)

Corn - Unmilled (including waxy, cracked - if 50% whole kernels)	Metric Tons	Sept. 1	Aug. 31
Distillers Dried Grain	Metric Tons	Sept.1	Aug. 31
Rye - Unmilled	Metric Tons	June 1	May 31
Oats - Unmilled	Metric Tons	June 1	May 31
Grain Sorghum - Unmilled	Metric Tons	Sept. 1	Aug. 31
Soybeans	Metric Tons	Sept. 1	Aug. 31
Soybean Cake and Meal	Metric Tons	Oct. 1	Sept. 30
Soybean Oil - including: crude (including degummed), once refined, soybean salad oil (including refined and further processed by bleaching, deodorizing or winterizing), hydro- genated, packaged oil	Metric Tons	Oct. 1	Sept. 30
Flaxseed	Metric Tons	June 1	May 31
Linseed Oil - including	Metric Tons	June 1	May 31

raw, boiled

Cottonseed	Metric Tons	Aug. 1	July 31
Cottonseed Cake and Meal	Metric Tons	Oct. 1	Sept. 30
Cottonseed Oil - including crude, once refined, cottonseed salad oil (refined and further processed by bleaching, deodorizing or winterizing), hydrogenated	Metric Tons	Oct. 1	Sept. 30
Sunflowerseed Oil crude, once refined, sunflowerseed salad oil (refined and further processed by bleaching, deodorizing or winterizing), hydrogenated	Metric Tons	Oct. 1	Sept. 30
Cotton - American Pima - Raw, extra long staple	Running Bales	Aug. 1	July 31
Cotton - Upland - Raw, staple length 1 1/16 inches and over	Running Bales	Aug. 1	July 31
Cotton - Upland - Raw, staple length 1 inch up	Running Bales	Aug. 1	July 31

to 1 1/16 inches

Cotton - Upland - Raw, staple length under 1 inch	Running Bales	Aug. 1	July 31
Rice - Long grain, rough (including parboiled)	Metric Tons	Aug. 1	July 31
Rice - Medium, short and other classes, rough (including parboiled)	Metric Tons	Aug. 1	July 31
Rice - Long grain, brown (including parboiled)	Metric Tons	Aug. 1	July 31
Rice - Medium, short and other classes, brown (including parboiled)	Metric Tons	Aug. 1	July 31
Rice - Long grain, milled (including parboiled)	Metric Tons	Aug. 1	July 31
Rice - Medium, short and other classes, milled (including parboiled, brewer's rice)	Metric Tons	Aug. 1	July 31
Cattle Hides and Skins - Whole cattle hides, (excluding wet blues)	Pieces	Jan. 1	Dec. 31

Cattle Hides and Skins - Whole calf skins (excluding wet blues)	Pieces	Jan. 1	Dec. 31
Cattle Hides and Skins - Whole kip skins, (excluding wet blues)	Pieces	Jan. 1	Dec. 31
Cattle Hides and Skins - Cattle, calf, and kip cut into croupons, crops, dossets, sides, butts and butt bend (hide equivalent) (excluding wet blues)	Number	Jan. 1	Dec. 31
Cattle Hides and Skins - Cattle, calf and kip, in cuts not otherwise specified; pickled/limed (excluding wet blues)	Pounds	Jan. 1	Dec. 31
Cattle, calf and kip, Wet blues - unsplit (whole or sided) hide equivalent	Number	Jan. 1	Dec. 31
Cattle, calf and kip, Wet blues - grain splits (whole or sided)	Number	Jan. 1	Dec. 31

hide equivalent

Cattle, calf and kip, Wet blues - splits, (excluding grain splits)	Pounds	Jan. 1	Dec. 31
Beef - fresh, chilled or frozen muscle cuts/whether or not boxed	Metric Tons	Jan. 1	Dec. 31
Pork- fresh, chilled or frozen muscle cuts/whether or not boxed	Metric Tons	Jan. 1	Dec. 31

Bryce Quick
Acting Administrator,
Foreign Agricultural Service.

Dated February 26, 2013.