



This document is scheduled to be published in the Federal Register on 03/19/2013 and available online at <http://federalregister.gov/a/2013-06086>, and on [FDsys.gov](http://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:** Final rule.

**SUMMARY:** USDA published a proposed rule in the **Federal Register** on June 25, 2012, which would have added reporting for pork (fresh, chilled, or frozen muscle cuts/whether or not boxed) and distillers dried grain (DDG) to the Export Sales Reporting Requirements (ESR). Under that 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 (FAS). This final rule implements the requirement to report weekly export sales of pork, but does not implement the requirement to report weekly export sales of DDG at this time.

**DATES:** The final rule will be effective on [Insert the date of publication in the **Federal Register**].

**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](mailto: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 would have added reporting for pork (fresh, chilled, or frozen muscle cuts/whether or not boxed) and DDG to the ESR. Under that 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 FAS. The 60-day public comment period ended on August 24, 2012.

A total of eight comments were received during the comment period. Adding pork to the ESR was supported by five comments and opposed by none. USDA is amending the regulation to add pork to the ESR, as is statutorily required.

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?”

In response to the comments on DDG, USDA has determined that adding the reporting requirement for export sales of DDG requires further review and will be publishing a proposed rule, with extension of comment period, on the proposed reporting requirement for this commodity.

### **Effective Date**

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule must be published in the Federal Register, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. USDA finds that there is good cause for making this rule effective less than 30 days after publication in the Federal Register because the Mandatory Price Reporting Act of 2010 (Pub. L. 111-239) mandates that pork be added to the ESR, and the comments with respect to pork favored adding pork to the ESR. Therefore, USDA has determined that it is in the public interest to amend the regulation to include pork as soon as possible and is immediately amending the regulation to add pork to the ESR.

### **Executive Order 12866**

The 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 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 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 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 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 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 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 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 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, 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.	Metric Tons	June 1	May 31

Hard and soft white)			
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 hull-less waxy barley)	Metric Tons	June 1	May 31
Corn - Unmilled (including waxy, cracked - if 50% whole kernels)	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	Metric Tons	Oct. 1	Sept. 30

oil (including refined and further processed by bleaching, deodorizing or winterizing), hydrogenated, packaged oil

Flaxseed	Metric Tons	June 1	May 31
Linseed Oil - including raw, boiled	Metric Tons	June 1	May 31
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 to 1 1/16 inches	Running Bales	Aug. 1	July 31
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 croupions, 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) hide equivalent	Number	Jan. 1	Dec. 31
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

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Bryce Quick,  
Acting Administrator,  
Foreign Agricultural Service.

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Dated: February 26, 2013.