

**Background**

The Omnibus Budget Reconciliation Act of 1993 (OBRA) made the 50/92 and the 0/92 provisions available to producers who were prevented from planting or had failed acreage for crop years 1994 through 1997. Currently, the prevented planting crop insurance provisions prohibit prevented planting coverage for any acreage considered to have been left unplanted under any other United States Department of Agriculture program. By this rule, an insured may collect both a guaranteed deficiency payment under the "0/85" and "0/92" provisions of the various commodity programs administered by United States Department of Agriculture under the Agricultural Act of 1949, as amended, and a prevented planting indemnity under the crop insurance program. Because the weather conditions in various parts of the midwest have not been conducive to timely planting of various 1995 program crops, an emergency situation exists for many producers which requires that this rule be made effective retroactive to January 1, 1995, without prior notice and comment. Comments are solicited for 60 days after the date of publication in the **Federal Register** and will be considered by FCIC before this rule is made final.

**List of Subjects****7 CFR Part 401**

Crop insurance, hybrid sorghum seed, rice.

**7 CFR Part 443**

Crop insurance, hybrid seed.

**7 CFR Part 457**

Crop insurance, sunflower seed.

**Interim Rule**

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Crop Insurance Regulations (7 CFR Part 401) by amending the Hybrid Sorghum Seed (§ 401.109) and Rice (§ 401.120) Endorsements; the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443); and the Common Crop Insurance Regulations (7 CFR Part 457) by amending the Sunflower Seed Crop Insurance Provisions (§ 457.108); applicable for the 1995 crop year only, to read as follows:

**PARTS 401, 443, AND 457—  
[AMENDED]**

1. The authority citation for 7 CFR part 401 is revised to read as follows:

**Authority:** 7 U.S.C. 1506(1).

2. Section 401.109 is amended by revising subparagraph 12.(d)(3)(iii)(C) of the Hybrid Sorghum Seed Endorsement to read as follows:

**§ 401.109 Hybrid sorghum seed endorsement.**

\* \* \* \* \*

**12. Late Planting and Prevented Planting**

\* \* \* \* \*

(d) \* \* \*  
(3) \* \* \*  
(iii) \* \* \*

(C) Land used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture (Proof that the insured had the inputs available to plant and produce a crop with the expectation of at least producing the production guarantee may be required.);

\* \* \* \* \*

3. Section 401.120 is amended by revising subparagraph 10.(d)(3)(ii)(C) of the Rice Endorsement to read as follows:

**§ 401.120 Rice endorsement.**

\* \* \* \* \*

**10. Late Planting and Prevented Planting**

\* \* \* \* \*

(d) \* \* \*  
(3) \* \* \*  
(ii) \* \* \*

(C) Land used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture (Proof that the insured had the inputs available to plant and produce a crop with the expectation of at least producing the production guarantee may be required.);

\* \* \* \* \*

4. The authority citation for 7 CFR part 443 is revised to read as follows:

**Authority:** 7 U.S.C. 1506(l).

5. Section 443.7(d) is amended by revising subparagraph 17.(d)(3)(iii)(C) of the Hybrid Seed Crop Insurance Policy to read as follows:

**§ 443.7 The application and policy.**

\* \* \* \* \*

(d) \* \* \*

**17. Late Planting and Prevented Planting**

\* \* \* \* \*

(d) \* \* \*  
(3) \* \* \*  
(iii) \* \* \*

(C) Land used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture (Proof that the insured had the inputs available to plant and produce a crop with the expectation of at least producing the production guarantee may be required.);

\* \* \* \* \*

6. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(l).

7. Section 457.108 is amended by revising subparagraph 13.(d)(3)(iv)(C) of the Sunflower Seed Crop Provisions to read as follows:

**§ 457.108 Sunflower Seed Crop Insurance Provisions.**

\* \* \* \* \*

**13. Late Planting and Prevented Planting**

\* \* \* \* \*

(d) \* \* \*  
(3) \* \* \*  
(iv) \* \* \*

(C) Land used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture (Proof that the insured had the inputs available to plant and produce a crop with the expectation of at least producing the production guarantee may be required.);

\* \* \* \* \*

Done in Washington, D.C., on June 2, 1995.

**Suzette M. Dittrich,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 95-14032 Filed 6-6-95; 8:45 am]

BILLING CODE 3410-08-P

**Agricultural Marketing Service****7 CFR Part 1220****RIN 0581-AB18****[No. LS-94-003]****Soybean Promotion and Research: Amend the Order To Adjust Representation on the United Soybean Board and Adjust Number of Board Meetings Required**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule adjusts the number of members for certain States on the United Soybean Board (Board) to reflect changes in production levels which have occurred since the Board was appointed in 1991 and decreases the number of required Board meetings from four a year to three a year.

**EFFECTIVE DATE:** June 7, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ralph L. Tapp, Chief, Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, room 2606-S; P.O. Box 96456; Washington, D.C. 20090-6456. Telephone number 202/720-1115.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding: Proposed Rule—Soybean Promotion and Research: Amend the Order to Adjust Representation on the United Soybean

Board and Adjust Number of Board Meetings Required published March 22, 1995 (60 FR 15082).

#### Executive Orders 12866 and 12778 and Regulatory Flexibility Act

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order No. 12778, Civil Justice Reform. It is not intended to have a retroactive effect.

The Soybean Promotion, Research, and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Act, a person subject to the Soybean Promotion and Research Order (Order) may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner has the opportunity for a hearing on the petition. After a hearing the Secretary will rule on the petition. The statute provides that the district court of the United States in any district in which the person resides or carries on a business has jurisdiction to review a ruling on the petition if a complaint for that purpose is filed not later than 20 days after the date of entry of the ruling.

Further, section 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program organized and operated under the laws of the United States relating to soybean promotion, research, consumer industry, or industry information. One exception in the Act concerns assessments collected by Qualified State Soybean Boards (QSSBs). This exception provides that, in order to ensure adequate funding of the operations of QSSBs under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation or termination of a QSSB or State soybean assessment.

This action has also been reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule adjusts representation on the Board to reflect changes in production levels that have occurred since the Board was appointed in 1991. It also decreases the

number of required Board meetings from four a year to three a year. The Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small business entities.

#### Background

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of 1 percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991. The Order established a Board of 60 members. For purposes of establishing the Board, the United States was divided into 31 geographic units. Representation on the Board from each unit was determined by the level of production in each unit. The Secretary appointed the initial Board on July 11, 1991.

Section 1220.201(c) of the Order provides that at the end of each 3 year period, the Board shall review soybean production levels in the geographic units throughout the United States. The Board may recommend to the Secretary modification in the levels of production necessary for Board membership for each unit. At its September 1994 meeting and again at its December 1994 meeting, the Board voted to recommend to the Secretary that no modification be made.

Section 1220.201(d) of the Order provides that at the end of each 3 year period, the Secretary must review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the criteria set forth in § 1220.201(e): (1) To the extent practicable, States with annual average soybean production of less than 3,000,000 bushels shall be grouped into geographically contiguous units, each of which has a combined production level equal to or greater than 3,000,000 bushels, and each such group shall be entitled to at least one member on the Board; (2) units with at least 3,000,000 bushels, but fewer than 15,000,000 bushels shall be entitled to one Board member; (3) units with 15,000,000 bushels or more but fewer than 70,000,000 bushels shall be entitled to two Board members; (4) units with 70,000,000 bushels or more but fewer than 200,000,000 bushels shall be

entitled to three Board members; and (5) units with 200,000,000 bushels or more shall be entitled to four members.

Representation on the Board, effective with this final rule, is based on average production levels for the years 1989–1993 (excluding the crops in the years in which production was the highest and in which production was the lowest) as reported by the National Agricultural Statistics Service of the U.S. Department of Agriculture.

Based on the average production levels for the years 1989–1993, this rule adjusts the number of geographic units from 31 to 30; and Board members from 60 to 59. Florida is no longer a separate unit. It joins the Eastern Region, and is represented by its Board representative. Georgia and South Carolina each lose one member and Wisconsin and Maryland each gain one member.

This adjustment is effective with the 1995 nominations and appointments.

Section 1220.212(a) of the Order provides that the Board shall meet at least four times a year, and more often if necessary for the Board to carry out its responsibilities. The Board, which operates under a 5 percent administrative cap, has recommended to the Secretary that in order to reduce its administrative costs and comply with the 5 percent cap, § 1220.212(a) be amended to reduce the number of required yearly Board meetings to three. This rule reduces the required minimum number of Board meetings from four to three a year.

On March 22, 1995, AMS published in the **Federal Register** (60 FR 15082) a proposed rule adjusting representation on the Board and adjusting the number of Board meetings required.

The proposed rule was published with a request for comments to be submitted by April 21, 1995.

The Department received four written comments. The comments and our responses follow:

The South Carolina Soybean Board (South Carolina Board) and the Georgia Agricultural Commodity Commission for Soybeans (Georgia Commission) objected to the proposed reapportionment because it would reduce Board membership for each State by one seat. Both assert that the Department did not adhere directly to the Act and Order by using the 1989–1993 crop production data to adjust representation on the Board. Based on their interpretation they suggest that the crop production years used in the proposed reapportionment should be 1988–1992. The South Carolina Soybean Association's (Association) and the Georgia Soybean Association's

(Association) comments also objected to the proposed reapportionment.

The Department decision to use the crop production years 1989–1993 was based on section 1969(b)(2)(E) of the Act and § 1220.201 of the Order which provides that at the end of each 3 year period starting on the effective date of the Order (July 9, 1991) the Secretary shall review the volume of production of each State or unit and shall adjust the number of Board members to conform with the volume of production specified in the Act and Order. The Act and Order also state that average annual soybean production shall be determined by using the average of the production for the State or unit over the five previous years, excluding the crops in which production was the highest and lowest.

Accordingly, in July of 1994, at the end of the first 3 year period, the Department reviewed the volume of production for the required 5 years. The five previous years data available in July 1994 were 1989–1993. Since the commenters' assertions are not consistent with the requirements of the Act and Order, no change is being made in this final rule.

The South Carolina Board and the Georgia Commission argue that reapportionment of the Board should have been made effective with the 1994 appointments to the Board. The two State Associations commented in support of this position.

To ensure sufficient time for Departmental clearance and appointment by December, the nomination and selection process for Board appointment has been initiated prior to July each year. Thus, the nominations for 1994 appointments by the Secretary had already been submitted based on the allocation of Board seats established by the initial Order when the reapportionment process began in July of 1994. Also, in order for the appointments to be made under a revised allocation based on reapportionment, a final rule must be promulgated which establishes the new allocation of Board seats. Consequently, the 1995 appointments rather than 1994 appointments are the first appointments which can be made under this reapportionment. Accordingly, no change is being made in this final rule.

#### **Effective Date**

Pursuant to 5 U.S.C. 553 it is found and determined that good cause exists for not postponing the effective date of the action until 30 days after publication of this rule in the **Federal Register**. This rule adjusts representation on the Board and reduces the required number of meetings of the

Board and should be made effective upon publication in order to begin the 1995 nomination and appointment process and to allow the Board to schedule fiscal year 1995 meetings accordingly.

#### **List of Subjects in 7 CFR Part 1220**

Agricultural research, Reporting and recordkeeping requirements, Soybeans.

For the reasons set forth in the preamble, 7 CFR is amended as follows:

#### **PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION**

1. The authority citation for 7 CFR part 1220 continues to read as follows:

**Authority:** 7 U.S.C. 6301–6311.

2. Section 1220.201 is amended by revising the section heading and paragraph (a), removing paragraph (f), and redesignating paragraph (g) as paragraph (f) as follows:

#### **§ 1220.201 Membership of board.**

(a) For the purposes of nominating and appointing producers to the Board, the United States shall be divided into 30 geographic units and the number of Board members from each unit, subject to paragraphs (d) and (e) of this section shall be as follows:

Unit	No. of members
Illinois .....	4
Iowa .....	4
Minnesota .....	3
Indiana .....	3
Missouri .....	3
Ohio .....	3
Arkansas .....	2
Nebraska .....	2
Mississippi .....	2
Kansas .....	2
Louisiana .....	2
South Dakota .....	2
Tennessee .....	2
North Carolina .....	2
Kentucky .....	2
Michigan .....	2
Virginia .....	2
Maryland .....	2
Wisconsin .....	2
Georgia .....	1
South Carolina .....	1
Alabama .....	1
North Dakota .....	1
Delaware .....	1
Texas .....	1
Pennsylvania .....	1
Oklahoma .....	1
New Jersey .....	1

Unit	No. of members
Eastern Region (New York, Massachusetts, Connecticut, Florida, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, District of Columbia, and Puerto Rico) .....	1
Western Region (Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska) .....	1

\* \* \* \* \*  
3. In § 1220.212, paragraph (a) is revised to read as follows:

#### **§ 1220.212 Duties.**

\* \* \* \* \*

(a) To meet not less than three times annually, or more often if required for the Board to carry out its responsibilities pursuant to this subpart.

\* \* \* \* \*

Dated: June 1, 1995.

**Lon Hatamiya,**

*Administrator.*

[FR Doc. 95-13921 Filed 6-6-95; 8:45 am]

**BILLING CODE 3410-02-P**

#### **7 CFR Part 1230**

#### **RIN 0581-AB36**

[No. LS-94-010]

#### **Pork Promotion, Research, and Consumer Information Act of 1985—Increase in Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 (Act) and the Pork Promotion, Research, and Consumer Information Order (Order) thereunder, this final rule increases the rate of assessment of 0.35 percent of market value of porcine animals to 0.45 percent; and adjusts the amount of assessment per pound due on imported pork and pork products to reflect the assessment rate increase of 0.10 percent and the decrease in the 1994 average price for domestic barrows and gilts. The assessment increase and the adjustment in assessments on imported pork and pork products will increase annual funding of the promotion, research, and consumer information program by an estimated \$10 million to \$12 million over a 12-month period.

**EFFECTIVE DATE:** September 3, 1995.

**ADDRESSES:** Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock