USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on October 29, 2004 (69 FR 63043). Copies of that rule were also mailed or sent via facsimile to all walnut handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on December 28, 2004, and one comment was received.

The commenter believes that the Board and this marketing order program should be terminated in favor of a free market system. However, the Act authorizes this marketing order program. Further, this comment does not relate to the Board's assessment rate decrease. Thus, no changes are being made based on the comment submitted.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 984—WALNUTS GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 984 which was published at 69 FR 63043 on October 29, 2004, is adopted as a final rule without change.

Dated: February 7, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–2603 Filed 2–9–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[Docket No. LS–04–09]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adjusts representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act of 1985 (Act), to reflect changes in cattle inventories and cattle and beef imports that have occurred since the most recent Board reapportionment rule became effective in 2002. These adjustments are required by the Beef Promotion and Research Order (Order) and will result in a decrease in Board membership from 108 to 104, effective with the Department of Agriculture's (USDA) appointments for terms beginning early in the year 2006.

EFFECTIVE DATE: February 10, 2005.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, Room 2638–S, Livestock and Seed Program, Agricultural Marketing Service (AMS), USDA, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; telephone number 202/720–1115; facsimile 202/720–1125, or by e-mail at: *Kenenth.Payne@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

The Regulatory Flexibility Act and the Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 United States Code (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 final rule will not have a significant economic impact on a substantial number of small 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 January 30, 2004, issue of ''Cattle,'' USDA's National Agricultural Statistics Service (NASS) estimates that in 2004 the number of cattle operations in the United States totaled about 1.1 million. The majority of these operations subject to the Order, 7 CFR 1260.101 *et seq.,* are considered small businesses under the criteria established by the Small Business Administration.

This final rule imposes no new burden on the industry. It only adjusts representation on the Board, established under the Act, to reflect changes in domestic cattle inventory and cattle and beef imports. The adjustments are required by the Order and will result in a decrease in Board membership from 108 to 104.

Background

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901 *et seq.*) and the Order issued thereunder. Domestic representation on the Board is based on cattle inventory numbers, and importer representation is based on the conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by the Secretary of Agriculture from nominations submitted by certified producer and importer organizations. A producer may only be nominated to represent the unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years and not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to

USDA modifications in the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically-contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit that has an additional one million head of cattle within a unit qualifies for additional representation on the Board as provided in § 1260.141(e)(4). As provided in § 1260.141(e)(3), importers are represented by a single unit, with the number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The initial Board appointed in 1986, was composed of 113 members. Reapportionment based on a 3-year average of cattle inventory numbers and import data, reduced the Board to 111 members in 1990, and 107 members in 1993, before the Board was increased to 111 members in 1996. The Board was decreased to 110 members in 1999, 108 members in 2001, and will be decreased to 104 members with appointments for terms effective early in 2006.

The current Board representation by States or units has been based on an average of the January 1, 1999, 2000, and 2001, inventory of cattle in the various States as reported by NASS of USDA. Current importer representation has been based on a combined total average of the 1998, 1999, and 2000, live cattle imports as published by the Foreign Agricultural Service of USDA and the average of the 1998, 1999, and 2000, live animal equivalents for imported beef products.

Recommendations concerning Board reapportionment were approved by the Board at its June 24, 2004, meeting. In considering reapportionment, the Board reviewed cattle inventories as well as cattle, beef, and beef product import data for the period January 1, 2002, to January 1, 2004. The Board recommended that a 3-year average of cattle inventories and import numbers should be continued. The Board determined that an average of the January 1, 2002, 2003, and 2004, USDA cattle inventory numbers would best reflect the number of cattle in each State or unit since publication of the 2001 reapportionment rule.

The Board reviewed the February 24, 2004, USDA's Economic Research Service circular, ''Livestock, Dairy, and Poultry Outlook,'' to determine proper importer representation. The Board recommended the use of a combined total of the average of the 2001, 2002, and 2003, cattle import data and the average of the 2001, 2002, and 2003, live animal equivalents for imported beef products. The method used to calculate the total number of live cattle equivalents was the same as that used in the previous reapportionment of the Board. The recommendation for importer representation is based on the most recent 3-year average of data available to the Board at its June 24, 2004, meeting to be consistent with the procedures used for domestic representation.

Comments

On November 12, 2004, AMS published in the **Federal Register** (69 FR 65386) for public comment a proposed rule providing for the adjustment in Board membership. That comment period ended December 13, 2004. USDA received one comment from an interested party in a timely manner. The comment has been posted on AMS' Web site at: *http://www.ams.usda.gov/lsg/mpb/bfcomments.htm.*

Discussion of Comment

The commenter supported a readjustment of Board membership, but suggested that alternating representation including consumers and others be included on the Board. However, the Act and Order provide that the Board shall be composed of cattle producers and importers appointed by the Secretary of Agriculture from nominations submitted by certified producer organizations. Consequently, this comment is not adopted.

Therefore, the reapportionment of the Board in this final rule is unchanged from the proposed rule. This final rule decreases the number of representatives on the Board from 108 to 104. Four States—Minnesota, Montana, Nebraska, and Wyoming—lose one member each. The States and units affected by the reapportionment plan and the current and revised member representation per unit are as follows:

States	Current representation	Revised representation
1. Minnesota	3	2
2. Montana	3	2
3. Nebraska	7	6
4. Wyoming	2	1

Board representation for the entire 40 units is shown in the revised § 1260.141(a) contained herein.

The 2004, nomination and appointment process was in progress while the Board was developing its recommendations. Thus, the Board reapportionment as provided for under the rulemaking will be effective with 2005, nominations and appointments that will be effective early in the year 2006.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register.** This action adjusts representation on the Board. By establishing this final rule, as provided herein, USDA will be able to make appointments effective early in the year 2006 based upon this reapportionment.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

■ For reasons set forth in the preamble, 7 CFR part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

■ 1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 *et seq.*

■ 2. In § 1260.141, paragraph (a) and the table immediately following it, are revised to read as follows:

§ 1260.141 Membership of Board.

(a) Beginning with the 2005, Board nominations and the associated appointments effective early in the year 2006, the United States shall be divided into 39 geographical units and 1 unit representing importers, and the number of Board members from each unit shall be as follows:

CATTLE AND CALVES [1]

State/unit	(1,000 head)	Directors
1. Alabama	1,390	1
2. Arizona	843	1
3. Arkansas	1,857	2
4. California	5,217	5
5. Colorado	2,700	3
6. Florida	1,757	2
7. Idaho	2,000	2
8. Illinois	1,367	1
9. Indiana	857	1
10. Iowa	3,517	4
11. Kansas	6,533	7
12. Kentucky	2,350	2
13. Louisiana	853	1
14. Michigan	1,003	1
15. Minnesota	2,467	2
16. Mississippi	1,063	1
17. Missouri	4,400	4
18. Montana	2,433	2
19. Nebraska	6,283	6
20. Nevada	507	1
21. New Mexico	1,547	2
22. New York	1,420	1
23. North Carolina	910	1
24. North Dakota	1,867	2
25. Ohio	1,233	1
26. Oklahoma	5,233	5
27. Oregon	1,400	1
28. Pennsylvania	1,637	2
29. South Dakota	3,767	4
30. Tennessee	2,227	2
31. Texas	13,833	14
32. Utah	887	1
33. Virginia	1,607	2
34. Wisconsin	3,333	3
35. Wyoming	1,387	1
36. Northwest		1
Alaska	12	
Hawaii	153	
Washington	1,117	
Total	1,408	
37. Northeast		1
Connecticut	57	
Delaware	24	
Maine	94	
Massachusetts	50	
New Hampshire	40	
New Jersey	45	
Rhode Island	6	
Vermont	285	
Total	600	
38. Mid-Atlantic		1
District of Columbia	0	
Maryland	240	
West Virginia	400	
Total	640	
39. Southeast		2
Georgia	1,260	
South Carolina	430	
Total	1,690	
40. Importer [2]	8,378	8

[1] 2002, 2003, and 2004, average of January 1 cattle inventory data.
[2] 2001, 2002, and 2003, average of annual import data.

* * * * *

Dated: February 4, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–2544 Filed 2–9–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1463

RIN 0560–AH31

Tobacco Transition Assessments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule provides regulations for the manner in which assessments are to be made on various domestic manufacturers or importers of tobacco products to fund the tobacco transition payment program as required by Title VI of the America Jobs Creation Act of 2004 (the 2004 Act).

EFFECTIVE DATE: February 9, 2005.

FOR FURTHER INFORMATION CONTACT: Misty Jones, Tobacco Division (TD), Farm Service Agency, United States Department of Agriculture (USDA), STOP 0514, Room 4080–S, 1400 Independence Avenue, SW., Washington, DC 20250–0514. Phone: (202) 720–7413; e-mail: *Misty.Jones@usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 642(b) of the 2004 Act (Pub. L. 108–357) requires that the regulations to implement Title VI of the 2004 Act are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notice and comment rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Background

General Overview

Sections 611 through 613 of the 2004 Act repeal the marketing quota and acreage allotment (marketing quota) and price support loan programs for tobacco that are authorized by Title III of the Agricultural Adjustment Act of 1938 (the 1938 Act), and the Agricultural Act of 1949 (the 1949 Act), effective at the end of the 2004 marketing year established for the respective kinds of tobacco that are subject to such quotas. The regulations used to administer the marketing quota program are codified at 7 CFR part 723 and the price support loan program regulations are codified at 7 CFR part 1464.

Sections 622 and 623 of the 2004 Act provide that eligible quota holders and tobacco producers will receive payments under the Tobacco Transition Payment Program (TTPP) in 10 equal installments in each of the 2005 through 2014 fiscal years. The regulations used to administer payments made under this program will be set forth in a separate rule.

Assessment and Trust Fund

Sections 625 through 627 of the 2004 Act provide for the establishment of assessments on certain domestic manufacturers and importers of tobacco products in order to fund the 10-year TTPP. The funds to be expended under this program are to be derived from a trust fund established by the 2004 Act. The trust fund is also to be used to pay for losses the Commodity Credit Corporation (CCC) incurs in disposing of tobacco it had acquired under the price support loan program and for costs that CCC may incur by using private financial institutions in carrying out portions of the program. To fund the trust, section 625(b)(1) of the 2004 Act requires that ‘‘each tobacco product manufacturer and tobacco product importer that sells tobacco products in domestic commerce in the United States’’ be subject to this assessment. The manner in which the assessments are to be levied is specified by the 2004 Act. Notably, assessments are levied on ‘‘each tobacco product manufacturer and tobacco product importer;’’ accordingly, no assessment is levied on an entity that imports, or sells domestically only un-manufactured tobacco.

Assessments are imposed during each of the fiscal years (FY) 2005 through 2014. The amount of such annual assessment is to be sufficient to cover the payments made to tobacco quota holders and tobacco producers and to cover other approved expenses made in that calendar year. For 2005, the percentage of these assessments to be collected from each such sector is as follows:

1. Cigarette manufacturers and importers—96.331 percent.
2. Cigar manufacturers and importers—2.783 percent.
3. Snuff manufacturers and importers—0.539 percent.
4. Roll-your-own tobacco manufacturers and importers—0.171 percent.
5. Chewing tobacco manufacturers and importers—0.111 percent.
6. Pipe tobacco manufacturers and importers—0.066 percent.

These percentages were established under section 625 of the 2004 Act by using calendar year 2003 data. The allocations by class for fiscal year 2005 were calculated by multiplying net tobacco products removed (both domestic and imported) by the maximum excise tax rate for each class of tobacco (see table 1 below).