

# Rules and Regulations

Federal Register

Vol. 73, No. 198

Friday, October 10, 2008

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1260

[Doc. No. LS-07-0141]

#### 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 (Act) of 1985, to reflect changes in cattle inventories and cattle and beef imports that have occurred since the most recent Board reapportionment rule became effective in February of 2005. These adjustments are required by the Beef Promotion and Research Order (Order) and will result in an increase in Board membership from 104 to 106, effective with the Department of Agriculture's (Department) appointments for terms beginning early in the year 2009.

**DATES:** *Effective Date:* October 11, 2008.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Payne, Chief, Marketing Programs Branch, on 202-720-1115, fax 202-720-1125, or by e-mail at [Kenneth.Payne@usda.gov](mailto:Kenneth.Payne@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The Office of Management and Budget (OMB) 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.

#### Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), The Agricultural Marketing Service (AMS) has considered the economic effect of this action on small entities and has determined that this 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 February 2007 publication of "Farms, Land in Farms, and Livestock Operations," the Department's National Agricultural Statistics Service (NASS) estimates that in 2006 the number of operations in the United States with cattle totaled approximately 970,000. The majority of these operations that are subject to the Order may be classified as small entities.

The final rule imposes no new burden on the industry. It only adjusts representation on the Board to reflect changes in domestic cattle inventory and cattle and beef imports. The adjustments are required by the Order and would result in an increase in Board membership from 104 to 106.

#### Background and Final Action

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 Department from nominations submitted by certified producer 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 the Department modifications to 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, 104 members in 2005, and will be increased to 106 members with appointments for terms effective early in 2009.

The current Board representation by States or units was based on an average of the January 1, 2002, 2003, and 2004, inventory of cattle in the various States

as reported by NASS. Current importer representation was based on a combined total average of the 2001, 2002, and 2003 live cattle imports as published by the Department's Foreign Agricultural Service and the average of the 2001, 2002, and 2003 live animal equivalents for imported beef products.

Recommendations concerning Board reapportionment were presented to the Board at its September 20, 2007, meeting, and were approved by the Executive Committee, on behalf of the Board, on October 16, 2007. In considering reapportionment, the Board reviewed cattle inventories as well as cattle, beef, and beef product import data for the period of January 1, 2005, to January 1, 2007. 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, 2005, 2006, and 2007, Department cattle inventory numbers would best reflect the number of cattle in each State or unit since publication of the last reapportionment rule published in 2005.

The Board reviewed data published by the Department's Economic Research Service to determine proper importer representation. The Board recommended the use of a combined total of the average of the 2004, 2005, and 2006 cattle import data and the average of the 2004, 2005, and 2006 live animal equivalents for imported beef products. The method used to calculate the total number of live animal equivalents was the same as that used in the previous reapportionment of the Board, except that the live animal equivalent weight was changed in 2006 from 509 pounds to 592 pounds. The recommendation for importer representation is based on the most recent 3-year average of data available to the Board at its September 20, 2007, meeting to be consistent with the procedures used for domestic representation.

The Board's recommended reapportionment plan will increase the number of representatives on the Board from 104 to 106. One State-Nebraska would gain one member. The importer unit would also gain one member. The States and units affected by the reapportionment plan and the current and revised member representation per unit are as follows:

State/unit	Current representation	Revised representation
1. Nebraska ..	6	7
2. Importer ....	8	9

On February 7, 2008, the Department published in the **Federal Register** (73 FR 7226) for public comment a proposed rule providing for the adjustment in Board membership. The proposed rule was published with a request for comments to be submitted to the Department by March 10, 2008.

The Department received one comment concerning the proposed rule for Board reapportionment. The commenter raised a number of points that are not pertinent to the proposal and therefore are not addressed. The commenter also suggested that the membership of the Board be reduced from 106 to six members. The structure of the Board is determined by the provisions of the Act and Order, which take into account production. Therefore, the Department has not adopted this suggestion.

It is found that good cause exists to make this rule effective less than 30 days after the date of publication in the **Federal Register** because this rule should be in effect as soon as possible for the Board appointments that will be effective early in the year 2009.

**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. 2901–2911 and 7 U.S.C. 7401.

■ 2. In § 1260.141, paragraph (a) is revised to read as follows:

**§ 1260.141 Membership of Board.**

(a) Beginning with the 2008 Board nominations and the associated appointments effective early in the year 2009, 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 <sup>1</sup>**

State/unit	(1,000 Head)	Directors
1. Alabama .....	1,307 ...	1
2. Arizona .....	930 .....	1
3. Arkansas .....	1,773 ...	2
4. California .....	5,450 ...	5
5. Colorado .....	2,617 ...	3
6. Florida .....	1,707 ...	2

**CATTLE AND CALVES <sup>1</sup>—Continued**

State/unit	(1,000 Head)	Directors
7. Idaho .....	2,117 ...	2
8. Illinois .....	1,347 ...	1
9. Indiana .....	883 .....	1
10. Iowa .....	3,783 ...	4
11. Kansas .....	6,550 ...	7
12. Kentucky .....	2,363 ...	2
13. Louisiana .....	847 .....	1
14. Michigan .....	1,030 ...	1
15. Minnesota .....	2,390 ...	2
16. Mississippi .....	1,013 ...	1
17. Missouri .....	4,450 ...	4
18. Montana .....	2,383 ...	2
19. Nebraska .....	6,500 ...	7
20. Nevada .....	500 .....	1
21. New Mexico .....	1,543 ...	2
22. New York .....	1,410 ...	1
23. North Carolina .....	860 .....	1
24. North Dakota .....	1,760 ...	2
25. Ohio .....	1,280 ...	1
26. Oklahoma .....	5,350 ...	5
27. Oregon .....	1,397 ...	1
28. Pennsylvania .....	1,603 ...	2
29. South Dakota .....	3,717 ...	4
30. Tennessee .....	2,240 ...	2
31. Texas .....	13,933	14
32. Utah .....	830 .....	1
33. Virginia .....	1,640 ...	2
34. Wisconsin .....	3,383 ...	3
35. Wyoming .....	1,403 ...	1
36. Northwest .....	.....	1
Alaska .....	15 .....	
Hawaii .....	158 .....	
Washington .....	1,107 ...	
Total .....	1,280 ...	
37. Northeast .....	.....	1
Connecticut .....	54 .....	
Delaware .....	23 .....	
Maine .....	90 .....	
Massachusetts .....	46 .....	
New Hampshire .....	38 .....	
New Jersey .....	41 .....	
Rhode Island .....	5 .....	
Vermont .....	272 .....	
Total .....	569 .....	
38. Mid-Atlantic .....	.....	1
Maryland .....	228 .....	
West Virginia .....	412 .....	
Total .....	640 .....	
39. Southeast .....	.....	2
Georgia .....	1,187 ...	
South Carolina .....	415 .....	
Total .....	1,602 ...	
40. Importer <sup>2</sup> .....	.....	9

<sup>1</sup> 2005, 2006, and 2007 average of January 1 cattle inventory data.

<sup>2</sup> 2004, 2005, and 2006 average of annual import data.

\* \* \* \* \*  
Dated: October 6, 2008.

**Lloyd C. Day,**  
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[FR Doc. E8–24115 Filed 10–9–08; 8:45 am]

**BILLING CODE 3410-02-P**