



## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 1260**

**[No. AMS-LPS-16-0071]**

#### **Beef Promotion and Research; Reapportionment**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would adjust 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 domestic cattle inventories since January 1, 2013, as well as changes in levels of imported cattle, beef, and beef products that have occurred since December 31, 2012, which were the cut-off dates for data used by the Agricultural Marketing Service (AMS) when the Board was last reapportioned in July 2014. These adjustments are required by the Beef Promotion and Research Order (Order) and, if adopted, would result in a decrease in Board membership from 100 to 99, effective with the U.S. Department of Agriculture's (USDA) appointments for terms beginning early in the year 2018.

**DATES:** Submit comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Comments should be posted online at [www.regulations.gov](http://www.regulations.gov). Comments received will be posted without change, including any personal information provided. All comments should reference the docket number AMS-LPS-16-0071, the date of

submission, and the page number of this issue of the Federal Register. Comments may also be sent to Mike Dinkel, Agricultural Marketing Specialist; Research and Promotion Division; Livestock, Poultry, and Seed Program, AMS, USDA; Room 2610-S, STOP 0249, 1400 Independence Avenue, SW.; Washington, D.C. 20250-0249; or via fax to (202) 720-1125. Comments will be made available for public inspection at the above address during regular business hours or via the Internet at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Mike Dinkel, Research and Promotion Division, at (301) 352-7497; fax (202) 720-1125; or by email at [Michael.Dinkel@ams.usda.gov](mailto:Michael.Dinkel@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined not to be significant for purposes of Executive Order 12866 or Executive Order 13563.

Accordingly, the Office of Management and Budget (OMB) has waived the review process.

## **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act prohibits states or political subdivisions of a state to impose any requirement that is in addition to, or inconsistent with, any requirement of the Act. There are no civil justice implications associated with this proposed 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 Administrator of AMS has considered the economic effect of this action on small entities and has determined that this proposed rule would 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 2013 publication of “Farms, Land in Farms, and Livestock Operations,” USDA’s National Agricultural Statistics Service (NASS) estimated that the number of operations in the United States with cattle in 2012 totaled approximately 915,000, down from 950,000 in 2009. There are approximately 270 importers who import beef or edible beef products into the United States and 198 importers who import live cattle into the United States. It is estimated that the majority of those operations subject to the Order are considered small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. SBA generally defines small agricultural service firms as those having annual receipts of \$7.5 million or less, and

small agricultural producers are generally defined as those having annual receipts of less than \$750,000.

The proposed rule imposes no new burden on the industry. It only adjusts representation on the Board to reflect changes in domestic cattle inventory, as well as in cattle and beef imports. The adjustments are required by the Order and would result in a decrease in Board membership from 100 to 99.

AMS is committed to complying with the E-Government Act of 2002 to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

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

### **Background and Proposed Action**

The Board was initially appointed on August 4, 1986, pursuant to the provisions of the Act [7 U.S.C. 2901-2911] and the Order issued thereunder. Domestic representation on the Board is based on cattle inventory numbers, while importer representation is based on the conversion of the volume of imported cattle, beef, and beef products into live animal equivalencies.

### **Reapportionment**

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 State or unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years, but 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 Secretary 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 is entitled to an additional Board member for each additional 1 million head of cattle within the unit, as provided in § 1260.141(e)(4). Further, as provided in § 1260.141(e)(3), importers are represented by a single unit, with

their 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 to 107 members in 1993 before the Board was increased back to 111 members in 1996. The Board decreased to 110 members in 1999, 108 members in 2001, and 104 members in 2005; increased to 106 members in 2009; decreased to 103 members in 2011; and decreased to 100 members in 2013. This proposal would amend § 1260.141(a) by increasing the importers from 6 to 7 members, decreasing the State of Virginia from 2 members to 1 member and decreasing the State of Texas from 13 to 12 members. Overall, if adopted, it would decrease the number of Board members from 100 to 99, with appointments for terms effective early in 2018.

The currently proposed, updated Board representation by States or geographic units is based on an average of the January 1, 2011, 2012, and 2013 inventory of cattle in the various States as reported by NASS. The proposed importer representation would be based on a combined total average of the 2011, 2012, and 2013 live cattle imports as published by USDA's Foreign Agricultural Service and the average of the 2011, 2012, and 2013 live animal equivalents for imported beef and beef products.

In considering reapportionment, the Board reviewed cattle inventories on the date January 1 in 2014, 2015, and 2016, as well as cattle, beef, and beef product import data for the period of January 1, 2013, to December 31, 2015. 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, 2014, 2015, and 2016 cattle inventory numbers would best reflect the number of cattle in each state or unit since publication of the last reapportionment rule published in 2014 [79 FR 46961]. The Board reviewed data published by the USDA’s Economic Research Service to determine proper importer representation. The Board recommended the use of the average of a combined total of the 2013, 2014, and 2015 cattle import data and the average of the 2013, 2014, and 2015 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. The live animal equivalent weight was changed in 2006 from 509 pounds to 592 pounds [71 FR 47074].

The Board’s recommended reapportionment plan, if adopted, would decrease the number of representatives on the Board from 100 to 99. From the Board’s analysis of USDA cattle inventories and import equivalencies, Virginia would lose one Board seat and Texas would lose one Board seat. The importers would gain one Board seat.

The States and units affected by the reapportionment plan and the current and proposed member representation per unit are as follows:

State/unit	Current Representation	Revised Representation
Virginia	2	1
Texas	13	12
Importers	6	7

The Board reapportionment as proposed by this rulemaking would take effect, if adopted, with appointments to fill positions early in the year 2018.

A 60-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate to facilitate the adjustment of the representation on the Board, which is required by the Order at least every 3 years but not more than every 2 years, and to allow for the annual nomination and appointment process for Board appointments that will be effective early in 2018.

### **List of Subjects**

#### 7 CFR Part 1260

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

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR part 1260 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. Revise § 1260.141 paragraph (a) and the table immediately following to read as follows:

#### **§ 1260.141 Membership of Board.**

(a) Beginning with the 2017 Board nominations and the associated appointments effective early in the year 2018, the United States shall be divided into 37 geographical

units and 1 unit representing importers, for a total of 38 units. 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. Arizona	900	1
2. Arkansas	1,660	2
3. Colorado	2,600	3
4. Florida	1,680	2
5. Idaho	2,307	2
6. Illinois	1,143	1
7. Indiana	873	1
8. Iowa	3,867	4
9. Kansas	5,983	6
10. Kentucky	2,110	2
11. Louisiana	787	1
12. Michigan	1,133	1
13. Minnesota	2,347	2
14. Mississippi	923	1
15. Missouri	3,983	4
16. Montana	2,567	3
17. Nebraska	6,317	6
18. New Mexico	1,340	1
19. New York	1,450	1
20. North Carolina	803	1
21. North Dakota	1,697	2
22. Ohio	1,243	1

23. Oklahoma	4,567	5
24. Oregon	1,300	1
25. Pennsylvania	1,580	2
26. South Dakota	3,783	4
27. Tennessee	1,770	2
28. Texas	11,500	12
29. Utah	807	1
30. Virginia	1,487	1
31. Wisconsin	3,467	3
32. Wyoming	1,293	1
33. Northwest		1
Alaska	10	
Hawaii	135	
Washington	1,137	
Total	1,282	
34. Northeast		1
Connecticut	48	
Delaware	16	
Maine	84	
Massachusetts	38	
New Hampshire	32	
New Jersey	28	
Rhode Island	5	
Vermont	260	
Total	<b>511</b>	
35. Mid-Atlantic		1
Maryland	186	

West Virginia	382	
Total	<b>567</b>	
36. Southeast		3
Alabama	1,240	
Georgia	1,057	
South Carolina	337	
Total	<b>2,633</b>	
37. Southwest		6
California	5,183	
Nevada	442	
Total	<b>5,625</b>	
38. Importers <sup>2/</sup>	6,949	7

<sup>1/</sup> 2014, 2015, and 2016 average of January 1 cattle inventory data.

<sup>2/</sup> 2013, 2014, and 2015 average of annual import data.

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**Dated: January 9, 2017**

Elanor Starmer  
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Agricultural Marketing Service

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