



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1220 and 1260

[No. AMS-LPS-13-0083]

[RIN 0581-AD49]

Soybean Promotion, Research, and Consumer Information; Beef Promotion and Research; Amendments to Allow Redirection of State Assessments to the National Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; technical amendments.

SUMMARY: This final rule amends the Soybean Promotion, Research, and Consumer Information Order (Soybean Order) and the Beef Promotion and Research Order (Beef Order) to add provisions allowing producers subject to these Orders to request, under certain circumstances, that their assessments paid to a State board or council authorized under their respective statutes, be redirected to the national program. The final rule also makes technical amendments to the Beef Order.

DATES: The final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kenneth Payne, Research and Promotion Division, at (202) 720-1118, fax (202) 720-1125, or by e-mail at Kenneth.Payne@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 13771

This rulemaking does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866 and is not subject to review by the Office of Management and Budget (OMB). Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Executive Order 12988

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

Executive Order 13175

AMS has assessed the impact of this final rule on Indian tribes and determined that this rule will not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, AMS will work with the Department

of Agriculture's (USDA) Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications are identified in this final rule.

Background Summary and Final Action Taken

Soybean Order

The Soybean Promotion, Research, and Consumer Information Act (Soybean Act) (7 U.S.C. 6301-6311) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Soybean Act, a person subject to the Soybean Order may file a petition with USDA stating that the Soybean Order, any provision of the Soybean Order, or any obligation imposed in connection with the Soybean Order, is not in accordance with the law and request a modification of the Soybean Order or an exemption from the Soybean Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Soybean Act provides that district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review USDA's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

Further, section 1974 of the Soybean Act provides, with certain exceptions, that nothing in the Soybean Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized under the laws of the United States or any State. One exception in the Soybean Act concerns assessments collected by Qualified State Soybean Boards (QSSBs). The exception

provides that to ensure adequate funding of the operations of QSSBs under the Soybean 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 Soybean Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation of a QSSB or State soybean assessment.

Beef Order

Section 11 of the Beef Research and Promotion Act of 1985 (Beef Act) (7 U.S.C. 2901-2911) provides that nothing in the Beef 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.

Soybean Order Amendments

The Soybean Act and the Soybean Order issued thereunder authorize the collection of an assessment from soybean producers of one-half of one percent (0.5 percent) of the net market value of soybeans, processed soybeans, or soybean products. In most cases, these assessments are collected by QSSBs that retain up to half of the assessments as authorized by the Soybean Act. The QSSBs as defined under Section 1967(14) of the Soybean Act will forward the remainder to the United Soybean Board (Soybean Board), which administers the national soybean checkoff program.

The original Soybean Order, which became effective July 9, 1991, mandated that all producers marketing soybeans pay an assessment of one-half of one percent (0.5 percent) of the net market price of the market price of soybeans sold. The original Soybean Order contained a provision in § 1220.228(b)(5)(i), which required QSSBs that were authorized or required to pay refunds to producers to certify to the Soybean Board that they would honor any request from a producer for a refund from the QSSB by forwarding to the Soybean Board those contributions for which the producer received a credit, pursuant to § 1220.223(a)(3). In other words, this section implicitly authorized refunds by the QSSB if State law allowed or required the QSSB to pay refunds; it further directed that the producer receive a credit for those refunds, with the amount sent to the Soybean Board.

In late 1995, 7 CFR 1220.228(b)(5)(i) was removed as part of a referendum process and rulemaking to eliminate obsolete regulatory language. However, the rulemaking inadvertently removed language that should have been retained regarding a producer's ability to redirect funds to the national program should they choose to do so. While this provision was removed from the order, QSSBs were still required to comply with the terms of their certification as a QSSB and, therefore, continued to allow for redirection of funds at the producer's request.

In States where payments to a QSSB are not required by State law, the opportunity for producers to choose, on a monthly basis, to direct the full federal assessment to the Soybean Board is already AMS' current policy and required under a QSSB's certification; this rule is

intended to formalize the policy. Therefore, AMS is adding provisions that remedy the removal of the original refund language. A new provision is added to the Soybean Order to (i) require producers in States where refunds are authorized to forward that refund to the Soybean Board and (ii) provide an opportunity for a refund if the QSSB is not authorized by State statute but is organized and operating within a State and is certified by the Soybean Board, as provided by § 1220.228(a)(2). To avail themselves of this option, producers need to submit to their QSSB a form (QSSB-1) postmarked by the 30th day of the month following the month the soybeans were sold. Assessments will not be able to be retroactively redirected from the QSSB to the Soybean Board. Likewise, AMS will require that the QSSB must respond by the last day of the month following the month in which the OMB-approved QSSB-1 form was received.

Regardless of a State's requirements or refunding provisions, a producer is required by the Soybean Act to pay an assessment of one-half of one percent (0.5 percent) of the net market value of soybeans, processed soybeans, or soybean products. Several States have additional producer assessments, mandated by State statutes, that are collected in addition to the assessment required by the Soybean Act. If a QSSB offers a producer refund under a State statute, the QSSB can only refund to the producer any State assessment collected in excess of the assessment that the producer is required to pay under the Soybean Act. AMS will allow the portion of the assessment compelled by the Soybean Act that the QSSB would normally keep to be redirected to the national program by the producer if State law allows.

Examples:

- Example 1 – States with no State Law: A soybean producer in California pays an assessment for a soybean sale. The assessment is collected by a certified Western Region Soybean Board, which keeps 50% and forwards the remaining 50% to the Soybean Board. California has no State law requiring a California assessment, so the California producer may request that the 50% of the assessment amount retained by the Western Region Soybean Board be redirected to the Soybean Board.
- Example 2 – States with a State Law that Authorizes Refunds: A soybean producer in Iowa pays an assessment for a soybean sale. The assessment is collected by Iowa Soybean Promotion Board, which keeps 50% and forwards the remaining 50% to the Soybean Board. Iowa has a State law with a refund provision, so the Iowa producer may request that the 50% of the assessment amount retained by the Iowa Soybean Promotion Board be redirected to the Soybean Board.
- Example 3 – States with a State Law that Does Not Authorize Refunds: A soybean producer in Virginia pays an assessment for a soybean sale. The assessment is collected by the Virginia Soybean Board which keeps 50% and forwards the remaining 50% to the Soybean Board. Virginia has a State law with no refund provision, so the Virginia soybean producer may not request that the 50% of the assessment amount retained by the Virginia Soybean Board be redirected to the Soybean Board.

Beef Order Amendments

Similarly, the Beef Promotion and Research Act of 1985 (Beef Act) and the Beef Promotion and Research Order (Beef Order) issued thereunder authorize the collection of an assessment from cattle producers of \$1.00 per head of cattle sold. In most cases, these assessments are collected by Qualified State Beef Councils (QSBCs) that retain up to one-half of the assessments, as authorized by the Beef Act.¹ The QSBCs, as defined under Section 3(14) of the Beef Act, are required to forward the remainder to the Cattlemen’s Beef Promotion and Research Board (Beef Board), which administers the national beef checkoff program.²

The original Beef Order, which became effective July 18, 1986, mandated that all producers owning and marketing cattle pay an assessment of \$1.00 per head of cattle, to be collected each time cattle are sold. The original Beef Order contained a provision in § 1260.181(b)(5), which required QSBCs that were authorized or required by State law to pay refunds to producers to certify to the Beef Board that they would honor any request from a producer for a refund from the QSBC by forwarding to the Beef Board those contributions for which the producer received a credit, pursuant to § 1260.172(a)(3). In other words, this section authorized refunds by the QSBC if State law allowed or required the QSBC to pay

¹ The Montana Beef Council is currently required by court order to obtain prior affirmative consent from producers before retaining any portion of the federal assessment.

² Section 3(14) of the Beef Act states that “the term “qualified State beef council” means a beef promotion entity that is authorized by State statute or is organized and operating within a State, that receives voluntary contributions and conducts beef promotion, research, and consumer information programs, and that is recognized by the Board as the beef promotion entity within such State.” 7 U.S.C. § 2902(14). Likewise, 7 CFR section 1260.115 of the Beef Order states “*Qualified State beef council* means a beef promotion entity that is authorized by State statute or a beef promotion entity organized and operating within a State that receives voluntary assessments or contributions; conducts beef promotion, research, and consumer and

refunds; it further directed that the producer receive a credit for those refunds, with the amount redirected to the Beef Board.

In late 1995, 7 CFR 1260.181(b)(5) was removed as part of rulemaking to eliminate obsolete regulatory language. However, the rulemaking inadvertently removed language that should have been retained regarding a producer's ability to redirect funds to the national program should they choose to do so. While this provision was removed from the order, QSBCs were still required to comply with the terms of their certification as a QSBC and, therefore, continued to allow for redirection of funds at the producer's request. Therefore, AMS is adding provisions to remedy the removal of the original language in § 1260.181.

Furthermore, while the Beef Act and Beef Order authorize QSBCs to retain up to 50 cents per head of cattle assessed, neither the Beef Act nor the Beef Order require producers to contribute a portion of the \$1.00-per-head assessment to a QSBC. Thus, unless a State statute requires the collection of the \$1.00-per-head assessment set forth in the Beef Act (the federal assessment) or requires producers to contribute a portion of the \$1.00-per-head federal assessment to the State beef council, producers are able to choose whether or not to contribute up to 50 cents per head of the federal assessment to their QSBC. While the original Beef Order did not address the specific situation that allows producers to choose whether or not to contribute up to 50 cents per head of the federal assessment to a QSBC, AMS is addressing this in the new language. A new provision is being added to the Beef Order to (i) require

industry information programs; and that is certified by the Board pursuant to this subpart as the beef promotion entity in such State.”

QSBCs in States where refunds to producers of the \$1.00-per-head assessment collected per the Beef Act and Order are authorized by State statute to forward that refund to the Beef Board, and (ii) provide an opportunity for producers to choose to direct the full \$1.00-per-head federal assessment to the Beef Board in States where State law does not require the collection of the \$1.00-per-head assessment set forth in the Beef Act (the federal assessment) or in States where State statutes do not require producers to contribute a portion of the \$1.00-per head federal assessment to the State beef council.

In States where payments to a QSBC are not required by State law, the opportunity for producers to choose, on a monthly basis, to direct the full \$1.00-per-head federal assessment to the Beef Board is already AMS' current policy; this rule is intended to formalize the policy. The Beef Board also conveyed this policy in its July 26, 2018, memo "Obligation to Redirect Assessments Upon Producer Request if Not Precluded by State Law."³ As QSBCs are responsible for collecting assessments on cattle sold in or originating in their State (§§ 1260.172(a)(5) and 1260.181(b)(3)), producers who are allowed refunds under State statutes and choose to redirect the full \$1.00-per-head assessment to the Beef Board must submit to the QSBC a written request on an approved request form (QSBC-1).

QSBCs generally describe the requirements and process for refunds in their Application for Certification that is reviewed and approved by the Beef Board. As part of their certification requirements, QSBCs must certify that any requests from producers for refunds will be honored by forwarding such request to the Beef Board if allowed by state law. In practice, QSBCs

follow similar operating procedures for collecting the \$1.00-per-head assessment across collection points (e.g., markets, dealers, brokers) and are required to reconcile transactions on a monthly basis.⁴ To align with their monthly reconciliation and budget planning, QSBCs provide for a monthly process through which producers can, if allowed by state law, redirect their assessments to the Beef Board. To avail themselves of this option, producers must submit a QSBC-1 form that is postmarked by the 15th day of the month following the month the cattle were sold. Assessments cannot be retroactively redirected from the QSBC to the Beef Board, and QSBCs will be required to respond to such requests within 60 days.⁵

Regardless of a State's requirements or refunding provisions, a producer is required by the Beef Act to pay an assessment of \$1.00 on each head of cattle sold. Several States have additional producer assessments, mandated by State statutes, which are collected in addition to the \$1.00-per-head assessment required by the Beef Act. If a QSBC offers a producer refund under a State statute, the QSBC can only refund to the producer any State assessment collected in addition to the \$1.00-per-head assessment that the producer is required to pay under the Beef Act. This final rule provides that the portion of the \$1.00-per-head federal assessment that the QSBC would normally keep under § 1260.181(b)(4) can be redirected to the national program by the producer if State law allows.

³ <https://www.beefboard.org/library/files/redirection-memo-072916.pdf>

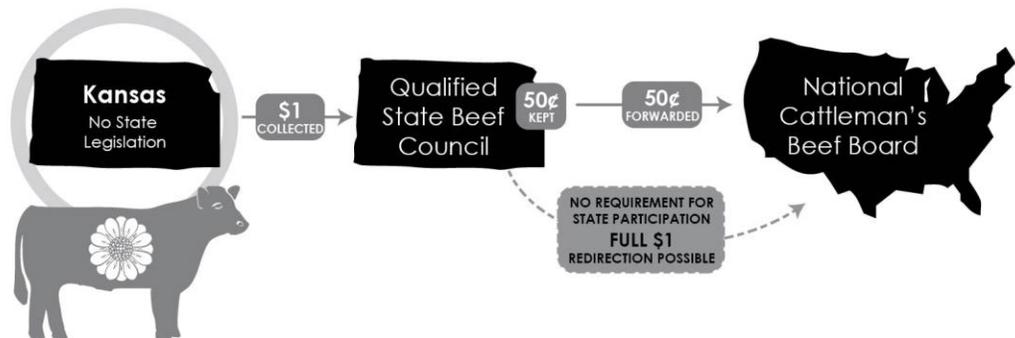
⁴ Cattlemen's Beef Board January 26, 2018, Guidelines for Qualified State Beef Councils.

⁵ Montana Beef Council (MBC) presently operates differently and is therefore an exception to this process. Under a Preliminary Injunction in *R-CALF v. Sonny Perdue*, MBC is required to obtain affirmative consent from producers before retaining *any* portion of the federal assessment. As a result, MBC collects and sends all assessments to the Beef Board unless producers request, currently on an annual basis, that \$0.50 of the \$1.00-per-head assessment be provided back to MBC.

Examples:

- Example 1 - States with no State Law: A producer in Kansas pays the \$1.00 federal assessment for a cattle sale. The Kansas Beef Council collects \$1.00, keeps \$0.50, and forwards \$0.50 to the Beef Board. Since there is no Kansas law compelling producers to contribute to the Kansas Beef Council, the producer may request that the \$0.50 of the original \$1.00 assessment be redirected to the Beef Board. This example is depicted in Figure 1.

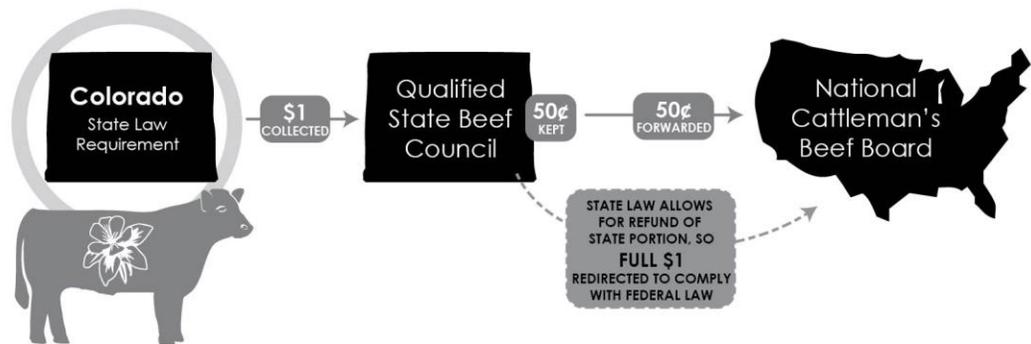
Figure 1.



- Example 2 – States with a State Law that Authorizes Refunds: A producer in Colorado pays \$1.00 in assessments for a cattle sale. The Colorado Beef Council collects \$1.00, keeps \$0.50, and forwards \$0.50 to the Beef Board. Colorado State law requires an assessment but allows a refund. The producer may request that the \$0.50 cents of the

original \$1.00 assessment be redirected to the Beef Board. This example is depicted in Figure 2.

Figure 2.

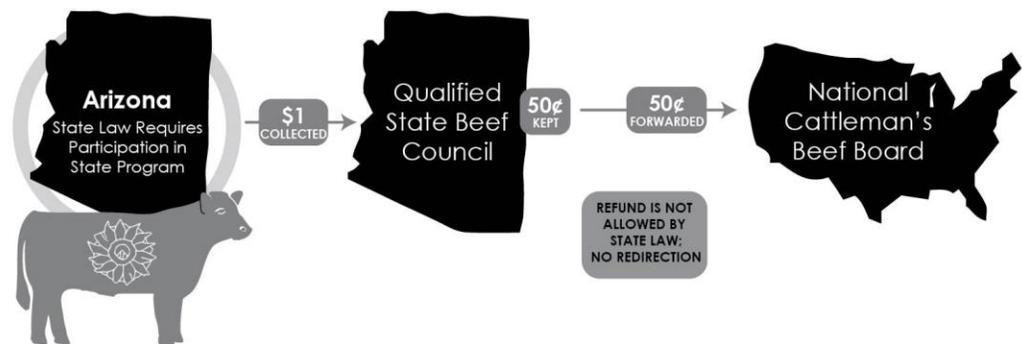


Based on current understanding, AMS believes that most states fall within one of these two examples – either they have no state law compelling them to contribute to a QSBC or they have a state law that provides for refunds. In either case, a producer in these states can request that the \$0.50 of the original \$1.00 assessment be redirected to the Beef Board.

- Example 3 – States with a State Law that Does Not Authorize Refunds: A producer in Arizona pays \$1.00 in assessments for a cattle sale. The Arizona Beef Council collects \$1.00, keeps \$0.50, and forwards \$0.50 to the Beef Board. Arizona law compels the collection of the \$1.00-per-head assessment and does not provide for a refund. The

producer may not request the Arizona Beef Council to redirect any portion of the \$0.50 to the Beef Board. This example is depicted in Figure 3.

Figure 3.



Based on our current understanding of state laws, AMS believes that a few states fall under this example including Arizona, California, Georgia, Louisiana, Michigan, Oregon, Washington, and Wyoming. Because there is a state law in place that mandates assessments without allowing for a refund, producers in these states may not request that the \$0.50 of the original \$1.00 assessment be redirected to the Beef Board. In general, AMS recommends stakeholders fully consult state laws as these examples are used for illustrative purposes and are subject to change.

Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Administrator of the 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.

Soybean Industry

USDA's Farm Service Agency estimates that there are 569,998 soybean producers subject to the Soybean Order. This estimate comes from including all soybean producers engaged in the production of soybeans in the previous 2 years. The majority of producers subject to the Soybean Order are small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.201). SBA defines small agricultural producers as those having annual receipts of less than \$750,000.

This final rule imposes no new burden on the soybean industry. This action clarifies that soybean producers, under certain circumstances, have the option to request that their assessments paid to a State board be directed to the national program. This action is not expected to change how producers or QSSBs operate with respect to directing funds when appropriate to the national program.

In the July 15, 2016 proposed rule, AMS provided a chart with estimates by state for the potential amount that could be redirected to the national program (81 FR 45987). The estimates varied depending on whether redirection was possible and the degree to which state law affected refund amounts. AMS received comments indicating that the chart was difficult to

follow and, in some cases, inaccurate. As a result, AMS is generalizing its estimate of potential financial impacts to range between \$0 (for those states in which redirection is not possible) to up to \$14 million (for high producing soybean states in which redirection is possible). However, given that this action is not expected to change how and whether producers choose to exercise the refund provisions in states where redirection of funds is possible, AMS does not anticipate a significant increase in producer requests that would impact the amount of assessments retained by a given state.

The information collection requirements on QSSBs are minimal. QSSBs are already required to remit assessments to the national programs. We have not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Accordingly, AMS has determined that this final rule will not have a significant economic impact on a substantial number of small soybean entities.

Beef Industry

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. The majority of these operations that are subject to the Beef Order may be classified as small entities. According to the NASS Web site “Farms, Land in Farms, and Livestock Operations,” the issues released between 2005 and 2013 included "Livestock Operations" in the title. Beginning in 2014, livestock operations data will be

available in the Census of Agriculture and most recent data can be referenced from Census data.

This final rule imposes no new burden on the beef industry. This action clarifies that producers, under certain circumstances, have the option of requesting that their assessments paid to a State council be directed to the national program. This action is not expected to change how producers or QSBCs operate with respect to directing funds when appropriate to the national program.

In the July 15, 2016, proposed rule, AMS provided a chart with estimates by state for the potential amount that could be redirected to the national program (81 FR 45988). The estimates varied depending on whether redirection was possible and the degree to which state law affected refund amounts. AMS received comments indicating that the chart was difficult to follow and, in some cases, inaccurate. As a result, AMS is generalizing its estimate of potential financial impacts to range between \$0 (for those states in which redirection is not possible) to up to \$4.6 million (for high producing beef states in which redirection is possible). However, given that this action is not expected to change how and whether producers choose to exercise the refund provisions in states where redirection of funds is possible, AMS does not anticipate a significant increase in producer requests that would impact the amount of assessments retained by a given state. Currently, a few States are in various stages of establishing or amending State laws regarding beef checkoff requirements, so this information may change over time.

The information collection requirements on QSBCs are minimal. QSBCs are already required to remit assessments to the national programs. We have not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Accordingly, AMS has determined that this final rule will not have a significant economic impact on a substantial number of small producers.

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR Part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C Chapter 35 (PRA)), this collection has been submitted to OMB with the reference number 0581-0246. Upon approval, the collection will be merged with OMB number 0581-0093, “National Research, Promotion, and Consumer Information Programs.” This final rule established the use of two new forms, which impose a total annual burden of 2.49 hours. The Producer Redirection of Checkoff Assessment forms, QSBC-1 and QSSB-1, require the minimum information necessary to effectively allow producers in certain states that pay their assessments to a State board or council authorized under their respective statutes, to redirect the assessment to the national program. The information collection requirements in the request are essential to carry out the legislative purpose of the Beef Act and the Soybean Act. Under the Beef and Soybean Orders, producers are required to pay an assessment each time cattle or soybeans are sold. While the Beef and Soybean Orders impose certain recordkeeping requirements, information required

under the Beef and Soybean Orders can be compiled from records currently maintained. Such records must be retained for at least 3 years beyond the marketing year of their applicability.

AMS is committed to complying with the E-Government Act, 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. As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In the proposed rule published July 15, 2016, (81 FR 45984) comments were invited on: (a) whether the proposed collection of information is necessary for the proper performance of functions of the Order and USDA's oversight of the program, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. No separate comments were received regarding the information collection section. However, AMS received a few comments that discussed the paperwork burden of the forms. AMS's response to those comments is discussed in the comments section.

Comments

A proposed rule concerning this action was published in the Federal Register on July 15, 2016 (81 FR 45984). A 60-day comment period ending September 13, 2016, was provided for interested persons to respond to the proposal. AMS received 14 comments. Of the 14 comments received, 12 commenters referenced proposed changes to the Beef Order, one commenter referenced proposed changes to the Soybean Order, and one commenter referenced both the Soybean and Beef Orders. One commenter did not provide comments within the timeframe provided in the proposed order. However, in general, this commenter provided thoughts similar to those who opposed to the proposed rule.

Beef Order Comments

Of the 12 comments received regarding the Beef Order, over half stated that they opposed the proposed rule while the others recommended clarification, modification, or changes to the proposed rule. The majority of commenters believe that assessments should go to the national program, unless a producer provides affirmative consent that their federal assessment paid to a State council to remain with the State program. In their view, this approach would be consistent with a voluntary contribution as specified in the statute. These commenters suggest that having to request that their assessments paid to a State council be directed to the national program creates a mandatory contribution. Some commenters argued this is unconstitutional. AMS disagrees. This action continues to provide producers with a choice about where they want their funds directed. Since the inception of the national program, few producers have requested redirection of their funds to the national program, instead

choosing to keep a portion of the federal assessment to support and invest in local programs and activities. For example, over the last three years, fewer than 20 producers or businesses have requested redirection of their funds to the national program. Thus, the majority of producers prefer that the QSBCs retain their assessments. Requiring the majority of producers to provide prior affirmative consent to keep their funds locally with the QSBCs would create an unnecessary burden to the industry as a whole.

A few commenters recommended that the deadline to request a redirection be extended. However, due to the need for QSBCs to reconcile their financial transactions on a monthly basis, the deadline for a redirection request must remain as a monthly process as stated in the proposed rule.

A few commenters recommended that AMS provide clarification of the individual State laws, clarify any conflicts with state laws, and modify/correct any examples provided in the rule and the tables to accurately reflect the governing state law. Specifically, the commenters requested greater clarification of the application of refunds in each state. AMS believes that application of State laws are best interpreted by the States themselves. The States, not AMS, are responsible for interpretation of their respective laws.

A few commenters pointed out that some QSBC names were incorrect. AMS has updated the list as part of its technical amendments and is reflected in this final rule.

One commenter requested that AMS clarify the terminology in the rule to reflect assessments of cattle producers, not “beef” producers, which, in their view, would include

multinational trade associations and packers. That same commenter strongly disagreed with the assumption that only 20 operations would request a redirection. AMS modified terminology in the preamble accordingly and clarifies that it is producers as defined at § 1260.116 who are subject to assessment per the requirements at § 1260.172. Furthermore, while the commenter disagrees that only 20 producers or operations would request redirection and thus that AMS's information collection burden is too low, AMS has reviewed the number of redirection requests received over the last 3 years as the basis for its estimate. Over the last three years, fewer than 20 producers or businesses in total have requested redirection of their funds to the national program. Based on that data, AMS anticipates that the number of redirection requests will be similar to past years. Therefore, we do not believe the burden estimate is too low.

One commenter recommended several rule text changes. First, the commenter recommended changes to proposed rule § 1260.181(b)(5) to correct a perceived syntax error. The commenter recommended adding two new subsections to correct. Additionally, the commenter recommended a change to § 1260.312(c) to provide clarity and consistency with § 1260.181(b)(4). AMS reviewed the comments and believes they have merit. Consequently, these technical amendments are reflected in this final rule.

Soybean Order Comments

AMS received two comments respecting the Soybean Order. Both commenters recommended a rule text change to clarify that the proposed rule applies to QSSBs subject to both § 1220.228(a)(1) and (2) of the Soybean Promotion, Research, and Consumer

Information Order. Both commenters also raised concerns with how the state refund rules applied to QSSBs. With respect to the commenters' recommended new amendatory language, AMS is unclear on section cross references and believes the suggested changes include an error. Rather than adopt the commenters suggested changes as they proposed, we have made modifications to the amendatory text by adding a new § 1220.228(e) to reflect that this rule applies to all QSSBs (i.e., those entities that elect to serve due to their state authorization under § 1220.228(a)(1) and those entities that apply for certification under § 1220.228(a)(2)). AMS also moved the proposed text about producers receiving a refund and their obligations to remit this refund to the Board to the appropriate Assessments section at § 1220.223(a)(3). Further, as stated above, states are responsible for interpreting their laws, and AMS advises stakeholders to carefully review the state refund laws applicable to their state.

Accordingly, no changes will be made to the rule as proposed other than the tables and other technical amendments.

Beef Technical Amendments

In addition, several technical amendments are made to update information in the Beef Promotion and Research Order and rules and regulations:

Section 1260.181(b)(4) currently requires QSBCs to remit assessments to the Beef Board by the last day of the month in which the QSBC received the assessment "unless the Board determines a different date." The Beef Board's practice has been to require QSBCs to

remit assessments by the 15th day of the following month. This section will be updated to reflect actual practice.

Section 1260.315 is amended to reflect the current listing of QSBCs.

List of Subjects

7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

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 parts 1220 and 1260 are amended as follows:

PART 1220-SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

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

Authority: 7 U.S.C. 6301-6311 and 7 U.S.C. 7401.

2. In § 1220.223, revise paragraph (a)(3) to read as follows:

§ 1220.223 Assessments.

(a) * * *

(3) In determining the assessment due from each producer under paragraph (a)(1) or (2) of this section, a producer who is contributing to a Qualified State Soybean Board shall receive a credit from the Board for contributions to such Qualified State Soybean Board on any soybeans assessed under this section in an amount not to exceed one-quarter of one percent of the net market price of the soybeans assessed. Producers receiving a refund from a State entity are required to remit that refunded portion to the Board in the manner and form required by the Secretary.

* * * * *

3. In § 1220.228, add paragraph (e) to read as follows:

§ 1220.228 Qualified State Soybean Boards.

* * * * *

(e) Entities authorized or required to pay refunds to producers must certify to the Board that any requests from producers for such refunds for contributions to it by the producer will be honored by forwarding to the Board that portion of such refunds equal to the amount of credit received by the producer for contributions pursuant to § 1220.223(a)(3). Entities not authorized by State statute but organized and operating within a State and certified by the Board pursuant to paragraph (a)(2) of this section must provide producers an opportunity for a State refund and must forward that refunded portion to the Board.

PART 1260—BEEF PROMOTION AND RESEARCH

4. The authority citation for part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901-2911 and 7 U.S.C. 7401

5. In § 1260.172, add paragraph (a)(7) to read as follows:

§ 1260.172 Assessments.

(a) * * *

(7) A producer may request a redirection of assessments from a Qualified State Beef Council to the Board in accordance with § 1260.181(b)(8) or (9) by submitting a redirection request on the appropriate form postmarked by the 15th day of the month following the month in which the cattle were sold. Requests may not be retroactive. Requests to redirect assessments must be submitted by the producers who paid the assessments.

* * * * *

6. In § 1260.181, revise the section heading and paragraph (b)(4) and add paragraphs (b)(8) and (9) to read as follows:

§ 1260.181 Qualified State Beef Councils.

* * * * *

(b) * * *

(4) Certify to the Board that such organization shall remit to the Board assessments paid and remitted to the council, minus authorized credits issued to producers pursuant to § 1260.172(a)(3), by the 15th day of the month following the month in which the assessment was remitted to the Qualified State Beef Council unless the Board determines a different date for remittance of assessments.

* * * * *

(8) Certify to the Board, if the Council is authorized or permitted to pay refunds of contributions to the Council, that any requests from producers for such refunds by the producers will be honored by redirecting to the Board that portion of such refunds equal to the amount of credit received by the producer for contributions pursuant to § 1260.172(a)(3).

(9) Certify to the Board that, if the Council is in a State in which State law does not require collection of the \$1-per-head assessment set forth in the Act (the federal assessment) by the Council, or if the Council is in a State in which State statutes do not require producers to contribute a portion of the \$1-per-head federal assessment to the Council, the Council will provide an opportunity for producers to choose to direct the full \$1-per-head federal assessment to the Board.

7. In § 1260.312, revise paragraph (c) to read as follows:

§ 1260.312 Remittance to the Cattlemen’s Board or Qualified State Beef Council.

* * * * *

(c) Remittances. The remitting person shall remit all assessments to the Qualified State Beef Council or its designee, or, if there is no Qualified State Beef Council, to the Cattlemen’s Board at an address designated by the Board, with the report required in paragraph (a) of this section not later than the 15th day of the month following the month in which the cattle were purchased or marketed. All remittances sent to a Qualified State Beef Council or the Cattlemen’s Board by the remitting persons shall be by check or money order payable to the

order of the Qualified State Beef Council or the Cattlemen's Board. All remittances shall be received subject to collection and payment at par.

8. Revise § 1260.315 to read as follows:

§ 1260.315 Qualified State Beef Councils.

The following State beef promotion entities have been certified by the Board as

Qualified State Beef Councils:

- (a) Alabama Cattlemen's Association.
- (b) Arizona Beef Council.
- (c) Arkansas Beef Council.
- (d) California Beef Council.
- (e) Colorado Beef Council Authority.
- (f) Delaware Beef Advisory Board.
- (g) Florida Beef Council, Inc.
- (h) Georgia Beef Board, Inc.
- (i) Hawaii Beef Industry Council.
- (j) Idaho Beef Council.
- (k) Illinois Beef Association, Inc.
- (l) Indiana Beef Council, Inc.
- (m) Iowa Beef Cattle Producers Association /dba/ Iowa Beef Industry Council.
- (n) Kansas Beef Council.

- (o) Kentucky Cattlemen's Association, Inc.
- (p) Louisiana Beef Industry Council.
- (q) Maryland Beef Council.
- (r) Michigan Beef Industry Commission.
- (s) Minnesota Beef Council.
- (t) Mississippi Beef Council.
- (u) Missouri Beef Industry Council, Inc.
- (v) Montana Beef Council.
- (w) Nebraska Beef Council.
- (x) Nevada Beef Council.
- (y) New Jersey Beef Industry Council.
- (z) New Mexico Beef Council.
- (aa) New York Beef Industry Council.
- (bb) North Carolina Cattlemen's Beef Council.
- (cc) North Dakota Beef Commission.
- (dd) Ohio Beef Council.
- (ee) Oklahoma Beef Council.
- (ff) Oregon Beef Council.
- (gg) Pennsylvania Beef Council.
- (hh) South Carolina Beef Council.

- (ii) South Dakota Beef Industry Council.
- (jj) Tennessee Beef Industry Council.
- (kk) Texas Beef Council.
- (ll) Utah Beef Council.
- (mm) Vermont Beef Industry Council.
- (nn) Virginia Beef Industry Council.
- (oo) Washington State Beef Commission.
- (pp) West Virginia Beef Council, Inc.
- (qq) Wisconsin Beef Council, Inc.
- (rr) Wyoming Beef Council.

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Bruce Summers
Administrator
Agricultural Marketing Service

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