DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. AMS–LS–10–0086]

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 cattle inventories and cattle and beef imports that have occurred since the most recent Board reapportionment rule became effective in October 2008. These adjustments are required by the Beef Promotion and Research Order (Order) and would result in a decrease in Board membership from 106 to 103, effective with the U.S. Department of Agriculture's (USDA) appointments for terms beginning early in the year 2012.

DATES: Written comments must be received by May 4, 2011.

ADDRESSES: Comments must be posted online at *http://www.regulations.gov* or sent to Craig Shackelford, Marketing Programs Branch, Livestock and Seed Program, Agricultural Marketing Service, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; or fax to (202) 720–1125. All comments should reference the docket number, the date, and the page number of this issue of the **Federal Register**. Comments will be available for public inspection at the aforementioned address, as well as on the Internet at *http://www.regulations.gov/*.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford, Marketing Programs Branch, on 202/720–1115, fax 202/720–1125, or by e-mail at *craig.shackelford@ams.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 proposed 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 Administrator of the Agricultural Marketing Service (AMS) has considered the economic effect of this action on small entities and has determined that this proposed 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 2010 publication of "Farms, Land in Farms, and Livestock Operations," USDA's National Agricultural Statistics Service (NASS) estimates that in 2009 the number of operations in the United States with cattle totaled approximately 950,000. The majority of these operations that are subject to the Order may be classified as small entities.

The proposed 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 a decrease in Board membership from 106 to 103.

Background and Proposed Action

The Board was initially appointed 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, 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 1 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 increased to 106 members in 2009. This proposal would, when finalized, decrease the number of Board members from 106 to 103 with appointments for terms effective early in 2012.

The current Board representation by States or units was based on an average of the January 1, 2005, 2006, and 2007, inventory of cattle in the various States as reported by NASS. Current importer representation was based on a combined total average of the 2005, 2006, and 2007 live cattle imports as published by USDA's Foreign Agricultural Service and the average of the 2004, 2005, and 2006 live animal equivalents for imported beef products.

In considering reapportionment, the Board reviewed cattle inventories as well as cattle, beef, and beef product import data for the period of January 1, 2008, to January 1, 2010. 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, 2008, 2009, and 2010, cattle inventory numbers would best reflect the number of cattle in each State or unit since publication of the last reapportionment rule published in 2008 (73 FR 60097).

The Board reviewed data published by the USDA's Economic Research Service to determine proper importer representation. The Board recommended the use of a combined total of the average of the 2008, 2009, and 2010, cattle import data and the average of the 2007, 2008, and 2009, 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.

The Board's recommended reapportionment plan would decrease the number of representatives on the Board from 106 to 103. From the Board's analysis of USDA cattle inventories and import equivalencies, Kansas, Nebraska, Nevada, and the Southeast Region would each lose one Board seat. Montana would gain a Board seat. The importers would lose two Board seats. The Board has recommended that the Southeast Region be expanded to include Alabama, permitting the new unit three Board members. According to the Board analysis, Nevada would lose its representation on the Board. However, the Board also proposed that California and Nevada be combined to form a Southwest unit.

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
Kansas	7	6.
Nebraska	7	6.
Nevada	1	0.
Southeast	3	3 (lost one seat but added a seat with Alabama joining the unit).
Importers	9	7.
Montana	2	3.
Southwest Unit	N/A	6 (California and Nevada).

The 2012 nomination and appointment process was not in progress while the Board was developing its recommendations. Thus, the Board reapportionment as proposed by this rulemaking would be effective, if adopted, with appointments that will be effective early in the year 2012.

A 30-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, and not more than every 2 years. To permit timely execution of the annual nomination and appointment process, publication of a subsequent final rule must occur as soon as practical.

It is found that good cause exists to provide a 30 day comment period after the date of publication in the **Federal Register** because the Beef Promotion and Research Program would benefit by having this rule in effect as soon as possible for the Board appointments that will be effective early in the year 2012.

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, it is proposed that 7 CFR part 1260 be 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) and the table immediately following it, are revised to read as follows:

§ 1260.141 Membership of Board.

(a) Beginning with the 2011 Board nominations and the associated appointments effective early in the year 2012, 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 [1]

State/unit	(1,000 Head)	Directors
1. Arizona	983	1
2. Arkansas	1,837	2
3. Colorado	2,650	3
4. Florida	1,710	2
5. Idaho	2,153	2
6. Illinois	1,200	1
7. Indiana	873	1
8. Iowa	3,933	4
9. Kansas	6,317	6
10. Kentucky	2,333	2
11. Louisiana	873	1

CATTLE AND CALVES [1]—Continued

State/unit	(1,000 Head)	Directors
12. Michigan	1,080	1
13. Minnesota	2,407	2
14. Mississippi	957	1
15. Missouri	4,217	4
16. Montana	2,583	3
17. Nebraska	6,350	6
18. New Mexico	1,540	2
19. New York	1,410	1
20. North Carolina	833	1
21. North Dakota	1,763	2
22. Ohio	1,270	1
23. Oklahoma	5,417	5
24. Oregon	1,290	1
25. Pennsylvania	1,607	2
26. South Dakota	3,733	4
27. Tennessee	2,040	2
28. Texas	13,500	14
29. Utah	820	1
30. Virginia	1,530	2
31. Wisconsin	3,367	3
32. Wyoming	1,327	1
33. Northwest		1
Alaska	15	
Hawaii	151	
Washington	1,070	
Total	1,236	
34. Northeast		1
Connecticut	50	
Delaware	21	
Maine	88	
Massachusetts	44	
New Hampshire	38	
New Jersey	37	
Rhode Island	5	
Vermont	267	
Total	550	
35. Mid-Atlantic		1
Maryland	192	
West Virginia	400	
Total	592	
36. Southeast		3
Alabama	1,253	
Georgia	1,100	
South Carolina	385	
Total	2,738	
37. Southwest		6
California	5,283	
Nevada	450	
Total	5,733	
38. Importer [2]	6,887	7

[1] 2008, 2009, and 2010 average of January 1 cattle inventory data.
[2] 2007, 2008, and 2009 average of annual import data.

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Dated: March 29, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–7826 Filed 4–1–11; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2011–BT–NOA–0013]

Energy Conservation Program: Data Collection and Comparison With Forecasted Unit Sales of Five Lamp Types

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of data availability.

SUMMARY: The U.S. Department of Energy (DOE) is informing the public of its collection of shipment data and creation of spreadsheet models to provide comparisons between actual and benchmark estimate unit sales of five lamp types (*i.e.,* rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps), which are currently exempt from energy conservation standards. As the actual sales do not exceed the forecasted estimate by 100 percent for any lamp type (*i.e.,* the threshold triggering rulemaking for an energy conservation standard for that lamp type has not been exceeded), DOE has determined that no regulatory action is necessary at this time. However, DOE will continue to track sales data for these exempted lamps. Relating to this activity, DOE has prepared and is making available on its Web site a spreadsheet showing the comparisons of anticipated versus actual sales, as well as the model used to generate the original sales estimates. The spreadsheet is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/five_lamp_types.html*.

FOR FURTHER INFORMATION CONTACT: Ms. Tina Kaarsberg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 287–1393. E-mail: *Tina.Kaarsberg@ee.doe.gov*.

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background

The Energy Independence and Security Act of 2007 (EISA 2007) (Pub. L. 110–140) was enacted on December 19, 2007. Among the requirements of subtitle B (Lighting Energy Efficiency) of title III of EISA 2007 were provisions directing the U.S. Department of Energy (DOE) to collect, analyze, and monitor unit sales of five lamp types (*i.e.,* rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps). In relevant part, section 321(a)(3)(B) of EISA 2007 amended section 325(l) of the Energy Policy and Conservation Act of 1975 (EPCA) by adding paragraph (4)(B) which generally directs DOE, in consultation with the National Electrical Manufacturers Association (NEMA), to: (1) Collect unit sales data for each of the five lamp types for calendar years 1990 through 2006 in order to determine the historical growth rate for each lamp type; and (2) construct a model for each of the five lamp types based on coincident economic indicators that closely match the historical annual growth rates of each lamp type to provide a neutral comparison benchmark estimate of future unit sales. (42 U.S.C. 6295(l)(4)(B)) Section 321(a)(3)(B) of EISA 2007 also amends section 325(l) of EPCA by adding paragraph (4)(C), which in relevant part, directs DOE to collect unit sales data for calendar years 2010 through 2025, in consultation with NEMA, for each of the five lamp types. DOE must then compare the actual lamp sales in that year with the benchmark estimate, determine if the unit sales projection has been exceeded, and issue the findings within 90 days after the end of the analyzed calendar year. (42 U.S.C. 6295(l)(4)(C))

On December 18, 2008, DOE issued a notice of data availability for the *Report on Data Collection and Estimated Future Unit Sales of Five Lamp Types* (hereafter "the 2008 analysis")[1] which was published in the **Federal Register** on December 24, 2008. 73 FR 79072. The 2008 analysis presented the 1990 through 2006 shipment data collected in consultation with NEMA, the spreadsheet model DOE constructed for each lamp type, and the benchmark unit sales estimate for 2010 through 2025. Today's NODA presents the first of the mandated follow-up comparisons. Section IV of this report compares the actual unit sales against benchmark unit sales estimates for 2010.

EISA 2007 also amends section 325(l) of EPCA by adding paragraphs (4)(D) through (4)(H) which state that if DOE finds that the unit sales for a given lamp type in any year between 2010 and 2025 exceed the benchmark estimate of unit sales by at least 100 percent (*i.e.,* more than double the anticipated sales), then DOE must take regulatory action to establish an energy conservation standard for such lamps. (42 U.S.C. 6295(l)(4)(D)–(H)) For 2,601–3,300 lumen general service incandescent lamps, DOE must adopt a statutorily-prescribed energy conservation standard, and for the other four types of lamps, the statute requires DOE to initiate an accelerated rulemaking to establish energy conservation standards. If the Secretary does not complete the accelerated rulemakings within one year of the end of the previous calendar year, there is a "backstop requirement" for each lamp type, which would establish energy conservation standard levels and related requirements by statute. *Id.*

As in the 2008 analysis, in this NODA, DOE uses manufacturer shipments as a surrogate for unit sales, because manufacturer shipment data is tracked and aggregated by the trade organization, NEMA. DOE believes that annual shipments track closely with actual unit sales of these five lamp types, as DOE presumes that retailer inventories remain constant from year to year. DOE believes this is a reasonable assumption because the markets for these five lamp types have existed for many years, thereby enabling manufacturers and retailers to establish appropriate inventory levels that reflect market demand. Furthermore, in the long-run, unit sales could not increase

[1] The Report on the 2008 analysis is available on the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/five_lamp_types_report.pdf.*