

Dated: October 12, 2001.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS-99-20]

Amendment to the Beef Promotion and Research Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Beef Promotion and Research Rules and Regulations (Rules and Regulations) established under the Beef Promotion and Research Act of 1985 (Act) to provide the opportunity for a producer to pay the \$1-per-head assessment to the Qualified State Beef Council (QSBC) located in the producer's State of residence prior to sale, subject to certain conditions.

DATES: Written comments must be received by December 18, 2001. Written comments on the information collection requirements must be received on or before December 18, 2001.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2627-S; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250-0251. Comments received may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. State that your comments refer to Docket No. LS-99-20.

Pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), also send comments regarding the merits of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the information collection and recordkeeping under the PRA should also be sent to the Desk Officer for Agriculture, Offices of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Ralph L. Tapp, Chief, Marketing Programs Branch on 202/720-1115 or fax 202/720-1125.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12988, the Regulatory Flexibility Act, and the Paperwork Reduction Act

The Department of Agriculture (Department) is proposing this rule in conformance with Executive Order 12866. This rule has been determined not to be significant and, therefore, has not been reviewed by OMB.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 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 proposed rule will not have a significant economic impact on a substantial number of small business 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.

The Department's National Agricultural Statistics Service estimates that in calendar year 2000 the number of cattle operations in the United States totaled approximately 1.1 million, including feedlot operations. There are also 45 QSBCs in the United States. The majority of these operations are considered small businesses under the criteria established by the Small Business Administration.

The proposed rule imposes no significant burden on the industry as it merely gives producers the opportunity to voluntarily pay the \$1-per-head assessment on cattle of their own production prior to sale and to remit the assessments to the QSBC located in the producer's State of residence.

The impact on QSBCs would be a redistribution of an estimated maximum of one-half million dollars of the \$40 million currently retained annually in total by the 45 QSBCs. The agency estimates that up to 6 million head or 20 percent of the approximately 30 million head of steers and heifers slaughtered annually are sold for

slaughter under retained ownership. The agency also estimates that assessments on up to one-sixth of the cattle (1 million head) would be paid in advance to QSBCs. If the \$1 assessment were paid in advance to QSBCs on these cattle, the QSBCs' 50 percent share of up to \$1 million in assessments or as much as \$500,000 would be redistributed among the QSBCs.

The major cattle feeding States of Texas, Nebraska, Kansas, Colorado, and Oklahoma could reasonably be expected to account for up to 80 percent of the \$500,000 in reduced revenue to QSBCs annually. These States collect an average of \$8 million annually and retain one-half that amount or \$4 million. Assuming that the revenue to each of these five States available for State directed programs was reduced by an average of \$80,000, it would represent a 2-percent decrease in the average revenue available for State directed programs in these States.

The remaining 40 QSBCs have annual State budgets that average about \$500,000. An estimated net increase in annual income for these States, as a result of the advance payment of assessments, could average up to \$10,000 per State representing a 2-percent increase.

Producers wishing to direct payment of assessments to the QSBC in the producers' State of residence when cattle are sent to another State for feeding under retained ownership would complete a form which would be provided to affected parties including the QSBC, the feedlot, and the packer or the collecting person.

Copies of the completed "Certification of Producer Directed Payment of Cattle Assessments" form shall be maintained on file by the producer, the QSBC or the Board, the feedlot operator, and the purchaser of the cattle for 2 years.

We estimate the average cost of the reporting burden per respondent would be \$16 annually.

We estimate the total average cost of the recordkeeper burden per recordkeeper would be \$8 annually.

The Administrator of 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.

In compliance with OMB regulations [5 CFR part 1320] which implements PRA, the information collection requirements contained in this proposed rule are being submitted for OMB approval.

Title: Certification of Producer Directed Payment of Assessments.

OMB Number: 0581—New collection.
Expiration Date of Approval: 3 years from date of approval.

Type of Request: Approval of new information collection.

Abstract: The Act provides for a program of promotion, research, consumer information, and industry information funded by assessments paid by beef producers each time cattle are sold and by importers of cattle and beef products upon importation.

Assessments on cattle and beef imports are collected by the U.S. Customs Service at the rate of \$1 per head or the equivalent. An assessment of \$1 per head is due from the producer each time a producer sells cattle in the United States. The assessment is to be collected by the purchaser or other "collecting person" as provided in the rules and regulations. The producer assessments are then remitted to QSBCs in 45 States and to the Cattlemen's Beef Promotion and Research Board (Board) in the remaining States. QSBCs retain one-half of the \$1 assessment for use in State directed programs and forward the other half to the Board.

Currently, QSBCs in the traditional cattle feeding States (e.g., Texas, Kansas, Nebraska, Oklahoma, and Colorado) collect and retain assessments on cattle sold that are owned by producers residing in other States. This benefits QSBCs in the States that have large numbers of cattle in feedlots owned by producers residing in other States. Some producers retain ownership of cattle and transport them to one of the cattle feeding States. To provide producers with more flexibility and to provide the opportunity for a more equitable distribution of assessment funds to States based on cattle ownership, the proposed "Certification of Producer Directed Payment of Cattle Assessments" form would be made available for use by producers who want the QSBC located in their States of residence to receive assessment funds rather than the QSBC in the State where the cattle are fed.

1. Certification of Producer Directed Payment of Assessments.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .20 hour per response.

Respondents: Producers wishing to direct payment of assessments to the QSBC in the producers' State of residence when cattle are sent to another State for feeding under retained ownership would use the form.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 800 hours.

Total cost: \$16,000.

2. Maintenance of records: 2 years.

Estimate of Burden: The public recordkeeping burden for keeping this document is estimated to average .10 hour per recordkeeper.

Recordkeepers: Producers, QSBCs, feedlot operators, and purchasers.

Estimated Number of Recordkeepers: 1,260.

Estimated Total Recordkeeping Hours: 504 hours.

Estimated Total Cost: \$10,080.

The total average cost of the estimated annual reporting burden per respondent would be: \$16.00.

The total average cost of the recordkeeping burden per recordkeeper would be: \$8.00.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments concerning the information collection and recordkeeping requirements contained in this action should reference the Docket Number LS-99-20, together with the date and page number of this issue of the **Federal Register**. Comments may be sent to Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2627-S; Livestock and Seed Program, AMS, USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250-0251; telephone: 202/720-1115 or Fax: 202/720-1125. All comments received will be available for public inspection during regular business hours at the above address. Comments also should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This proposed rule would amend the rules and regulations published in the **Federal Register** on February 26, 1988 (53 FR 5749) (7 CFR § 1260.301 to § 1260.315). These regulations further define the requirements of the Beef Promotion and Research Order (Order)

(51 FR 21632) (7 CFR § 1260.101 to § 1260.217) under the Beef Promotion and Research Act of 1985 (Act), 7 U.S.C. 2901-2911.

Background and Proposed Change

The Act authorizes the establishment of a national beef promotion and research program. The final Order establishing a beef promotion and research program was published in the **Federal Register** on July 18, 1986, (51 FR 21632) and assessments began on October 1, 1986. The program is administered by the Board which is composed of 110 cattle producers and importers. The program is funded by a \$1-per-head assessment on producer marketings of cattle in the United States and an equivalent amount on imported cattle, beef, and beef products. In 45 States, QSBCs receive the \$1-per-head of cattle assessment remitted under the program and retain up to half of the \$1 for State-directed programs and remit the remainder to the Board. The Board receives all import assessments and all producer assessments in the five States with relatively small cattle numbers that do not have QSBCs. In 2000, the 45 QSBCs received a total of about \$80 million in assessments. QSBCs retained about \$40 million and remitted approximately \$40 million to the Board.

The domestic assessment, due each time cattle are sold by a producer, is collected by the buyer or "collecting person" and remitted to the Board or QSBC. The term "producer" is defined as follows: "means any person who owns or acquires ownership of cattle; provided, however, that a person shall not be considered a producer within the meaning of this subpart if (a) the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee; or (b) the person (1) acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third-party, (2) resold such cattle no later than 10 days from the date on which the person acquired ownership, and (3) certified, as required by regulations prescribed by the Board and approved by the Secretary, that the requirements of this provision have been satisfied."

When cattle are sold within 10 days of purchase by a person who is not a producer under the above definition, the collecting person is not required to collect the \$1 assessment from the person (seller), if the seller provides the collecting person with a Statement of Certification of Non-Producer Status on a form approved by the Board and the Secretary. The person claiming non-producer status must submit to the

collecting person a Statement of Certification of Non-Producer Status "at the time of sale" in lieu of paying the assessment.

In a similar fashion this proposed modification to the regulations to permit producer directed payment of assessments would result in the collecting person, at the time of sale, collecting a document certifying the assessment had been paid in advance by the producer.

It is believed that this producer directed payment option would be used by producers of a relatively small share of all cattle sold. It would apply only to cattle of a producer's own production transported to another State under retained ownership for feeding prior to sale as slaughter cattle. Utilizing this option would permit a producer who retains ownership of cattle to ensure that the QSBC located in the State where the producer resides receives the \$1 checkoff rather than the QSBC in the State in which the cattle are located when sold. This could increase checkoff revenue for many QSBCs such as those located in the southeastern United States that currently do not receive revenue from cattle owned and sold by producers residing in the southeastern States who use feedlots in States such as Texas, Kansas, Nebraska, Oklahoma, and Colorado to finish cattle before selling the cattle to packers.

Since States retain one-half of the \$1-per-head checkoff for use in State directed programs, providing producers with the flexibility and the opportunity to direct payment of the assessment to their home State likely would increase revenue in many States such as Florida, Georgia, Alabama, and Mississippi with limited feedlot capacity.

The Department estimates that a maximum of \$500,000 of the total \$40 million currently retained annually by the 45 QSBCs would be redirected to States that currently do not receive revenue from cattle owned and sold by their producers. Approximately 6 million head, or 20 percent, of the estimated 30 million head of steers and heifers slaughtered annually are sold for slaughter under retained ownership. The Department estimates that assessments on up to one-sixth of the cattle (1 million head) would be paid in advance under this proposal to QSBCs.

The major cattle feeding States of Texas, Nebraska, Kansas, Colorado, and Oklahoma could reasonably be expected to account for up to 80 percent of the \$500,000 in reduced revenue to QSBCs annually. These States collect an average of \$8 million annually and retain one-half that amount or \$4 million. Assuming that the revenue to

each of these five States available for State directed programs was reduced by an average of \$80,000, it would represent a 2-percent decrease in the average revenue available for State directed programs in these States.

The remaining 40 QSBCs have annual State budgets that average about \$500,000. An estimated net increase in annual income for these States, as a result of the advance payment of assessments, could average up to \$10,000 per State representing a 2-percent increase.

Producers desiring to direct payment of assessments could do so subject to the requirements of a new paragraph § 1260.311(f) which would read as follows:

"(f)(1) A producer who transports, prior to sale, cattle of that producer's own production to another State, may elect to make a directed payment of the \$1-per-head assessment in advance to the QSBC in the State in which the producer resides, or to the Board if there is no QSBC in such State, provided that the producer fulfills the requirements set forth below:

(i) transports the cattle under retained ownership to a feedlot or similar location, and the cattle remain at such location, prior to sale, for a period not less than 30 days; and

(ii) the producer, at the time of transport, signs a Certification of Producer Directed Payment of Cattle Assessments form indicating that the assessment has been paid in advance. A copy of the certification form establishing the payment of the assessment shall be sent by the producer with the assessment when remitted to the QSBC or the Board. The producer also shall send a copy of the certification form to the feedlot operator at the time the cattle are delivered. A copy of the certification form also shall be given to the purchaser of the cattle by the feedlot operator at the time of sale.

(2) The certification form will include the following information:

1. Producer's Name.
2. Producer's social security number or Tax I.D. number.
3. Producer's address (street address or P.O. Box, city, State, and zip code).
4. Signature of Producer.
5. Producer's State of residence.
6. Number of cattle shipped to out of State feedyard under retained ownership.
7. Date cattle shipped.
8. State where cattle will be on feed.
9. Name of feedyard.
10. Address of feedyard.

(3) For those cattle for which the assessment has been producer directed

and paid in advance pursuant to subparagraph (1) above, the purchaser of the cattle shall not be required to collect and remit the assessment, but shall maintain on file a copy of the Certification of Producer Directed Payment of Cattle Assessments form completed and signed by the producer who originally transported the cattle under retained ownership.

(4) For those cattle for which the assessment has been producer directed and paid in advance pursuant to subparagraph (1) above, copies of the completed Certification of Producer Directed Payment of Cattle Assessments form shall be maintained on file by the producer, the QSBC or the Board, the feedlot operator, and the purchaser of the cattle for 2 years."

List of Subjects in 7 CFR Part 1260

Advertising, Agricultural research, Imports, Marketing agreements, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that title 7 of the CFR part 1260 be amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation of part 1260 continues to read as follows:

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

2. Paragraph (a) of § 1260.311 is revised to read as follows:

§ 1260.311 Collecting persons for purposes of collection of assessments.

* * * * *

(a) Except as provided in paragraphs (b), (c), and (f) of this section, each person making payment to a producer for cattle purchased in the United States shall collect from the producer an assessment at the rate of \$1 per head of cattle purchased and shall be responsible for remitting assessments to the QSBC or the Board as provided in § 1260.312. The collecting person shall collect the assessment at the time the collecting person makes payment or any credit to the producer's account for the cattle purchased. The person paying the producer shall give the producer a receipt indicating payment of the assessment.

* * * * *

3. Paragraph (c) of § 1260.311 is revised to read as follows:

* * * * *

(c) In the States listed below there exists a requirement that cattle be brand inspected by State authorized inspectors prior to sale. In addition, when cattle

are sold in the sales transactions listed below in those States, these State authorized inspectors are authorized to, and shall, except as provided for in paragraph (f) of this section, collect

assessments due as a result of the sale of cattle. In those transactions in which inspectors are responsible for collecting assessments, the person paying the producer shall not be responsible for the

collection and remittance of such assessments. The following chart identifies the party responsible for collecting and remitting assessments in these States:

States	Sales through auction market	Sales to a slaughter/packer	Sales to a feedlot	Sales to an order buyer/dealer	Country sales ¹
Arizona	CP	CP	CP	B	B
California	CP	CP	B	B-CP	B
Colorado	CP	B	B	B	B
Idaho	CP	CP	B	B	B
Montana	CP	B	B	B	B
Nebraska	CP	CP	B-CP	B-CP	B-CP
Oregon	CP	B-CP	B	B	B
New Mexico	CP	B-CP	B-CP	B-CP	B-CP
Utah	CP	B-CP	B	B	B
Washington	CP	CP	B	B-CP	B
Wyoming	CP	B	B	B	B

Key:

B—Brand inspector has responsibility to collect and remit assessments due.

CP—The person paying the producer shall be the collecting person and has responsibility to collect and remit the assessments due.

B-CP—Brand inspector has responsibility to collect; however, when there has not been a physical brand inspection the person paying the producer shall be the collecting person and has the responsibility to collect and remit assessments due.

¹ For the purpose of this subpart, the term "country sales" shall include any sales not conducted at an auction or livestock market and which is not a sale to a slaughter/packer, feedlot, or order buyer or dealer.

* * * * *

4. A new paragraph (f) of § 1260.311 is added to read as follows:

(f)(1) A producer who transports, prior to sale, cattle of that producer's own production to another State, may elect to make a directed payment of the \$1-per-head assessment in advance to the QSBC in the State in which the producer resides, or to the Board if there is no QSBC in such State, provided that the producer fulfills the requirements set forth below:

(i) transports the cattle under retained ownership to a feedlot or similar location, and the cattle remain at such location, prior to sale, for a period not less than 30 days; and

(ii) the producer, at the time of transport, signs a Certification of Producer Directed Payment of Cattle Assessments form indicating that the assessment has been paid in advance. A copy of the certification form establishing the payment of the assessment shall be sent by the producer with the assessment when remitted to the QSBC or the Board. The producer also shall send a copy of the certification form to the feedlot operator at the time the cattle are delivered. A copy of the certification form also shall be given to the purchaser of the cattle by the feedlot operator at the time of sale.

(2) The certification form will include the following information:

1. Producer's Name.
2. Producer's social security number or Tax I.D. number.

3. Producer's address (street address or P.O. Box, city, State, and zip code).

4. Signature of Producer.

5. Producer's State of residence.

6. Number of cattle shipped to out of State feedyard under retained ownership.

7. Date cattle shipped.

8. State where cattle will be on feed.

9. Name of feedyard.

10. Address of feedyard.

(3) For those cattle for which the assessment has been producer directed and paid in advance pursuant to paragraph (f)(1) of this section, the purchaser of the cattle shall not be required to collect and remit the assessment, but shall maintain on file a copy of the Certification of Producer Directed Payment of Cattle Assessments form completed and signed by the producer who originally transported the cattle under retained ownership.

(4) For those cattle for which the assessment has been producer directed and paid in advance pursuant to paragraph (f)(1) of this section, copies of the completed Certification of Producer Directed Payment of Cattle Assessments form shall be maintained on file by the producer, the QSBC or the Board, the feedlot operator, and the purchaser of the cattle for 2 years.

Dated: October 12, 2001.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

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DEPARTMENT OF ENERGY

10 CFR Part 852

RIN 1901-AA90

Guidelines for Physicians Panel Determinations on Worker Requests for Assistance in Filing for State Workers' Compensation Benefits

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking; announcement of public hearing.

SUMMARY: This document announces a public hearing to be held on October 25, 2001, in order to obtain comments regarding a notice of proposed rulemaking published in the **Federal Register** on September 7, 2001. This is the second public hearing held on this proposed rulemaking. The first hearing was held on October 10, 2001, at the Forrestal Building in Washington, D.C. Testimony submitted at that hearing can be found at the Office of Advocacy website: www.eh.doe.gov/advocacy. Testimony submitted at the October 25 hearing will also be made available at this website.

DATES: Oral views, data, and arguments may be presented at the public hearing, beginning at 4 p.m. on October 25, 2001. DOE must receive requests to speak at the public hearing and a fax of your statements no later than 4 p.m., October 24, 2001. DOE is requesting that speakers bring four (4) copies of their written comments and prepared statements for the public hearing.