

give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 2001–2002 marketing year began July 1, 2001, and the percentages established herein apply to all merchantable hazelnuts handled from the beginning of the crop year; (2) handlers are aware of this rule, which was recommended at an open Board meeting, and need no additional time to comply with this rule; and (3) interested persons are provided a 60-day comment period in which to respond, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR Part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 982.249 is added to read as follows:

Note: This section will not be published in the annual Code of Federal Regulations.

§ 982.24 Free and restricted percentages—2001–2002 marketing year.

(a) The interim final free and restricted percentages for merchantable hazelnuts for the 2001–2002 marketing year shall be 4.9363 and 95.0637 percent, respectively.

(b) On May 31, 2002, the final free and restricted percentages for merchantable hazelnuts for the 2001–2002 marketing year shall be 6.1048 and 93.8952 percent, respectively.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6147 Filed 3–13–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS–01–05]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adjusts representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act (Act) of 1985, to reflect changes in cattle inventories and cattle and beef imports that have occurred since the most recent Board reapportionment rule became effective in 1999. These adjustments are required by the Beef Promotion and Research Order (Order) and will result in a decrease in Board membership from 110 to 108, effective with the Department of Agriculture's (USDA) appointments for terms beginning early in the year 2003.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT:

Marlene M. Betts, Acting 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. Telephone number is 202/720–1115.

SUPPLEMENTARY INFORMATION:

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

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 United States Code (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 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.

In the January 26, 2001, issue of "Cattle," USDA's National Agricultural Statistics Service (NASS) estimates that in 2000 the number of cattle operations in the United States totaled about 1.1 million. The majority of these operations subject to the Order, 7 CFR 1260.101 *et seq.*, are considered small businesses under the criteria established by the Small Business Administration.

This final rule imposes no new burden on the industry. It only adjusts representation on the Board to reflect changes in domestic cattle inventory and cattle and beef imports. This action will adjust representation on the Board, established under the Act. The adjustments are required by the Order and will result in a decrease in Board membership from 110 to 108.

Background and Final Action

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901 *et seq.*) and the Order issued thereunder. Domestic representation on the Board is based on cattle inventory numbers, and importer representation is based on the conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by USDA 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 USDA modifications in the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that

includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically-contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit that has an additional one million head of cattle within a unit qualifies for additional representation on the Board as provided in § 1260.141(e)(4). As provided in § 1260.141(e)(3), importers are represented by a single unit, with the number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The initial Board appointed in 1986 was composed of 113 members. Reapportionment based on a 3-year average of cattle inventory numbers and import data, reduced the Board to 111 members in 1990 and 107 members in 1993 before the Board was increased to 111 members in 1996. The Board was decreased to 110 members in 1999 and will be decreased to 108 members with appointments for terms effective early in 2003.

The current Board representation by States or units has been based on an average of the January 1, 1996, 1997, and 1998 inventory of cattle in the various States as reported by NASS of USDA. Current importer representation has been based on a combined total average of the 1995, 1996, and 1997 live cattle imports as published by the Foreign Agricultural Service of USDA and the average of the 1995, 1996, and 1997 live animal equivalents for imported beef products.

Recommendations concerning Board reapportionment were approved by the Board at its August 9, 2001, meeting. In considering reapportionment, the Board reviewed cattle inventories as well as cattle, beef, and beef product import data for the period January 1, 1998, to January 1, 2001. 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, 1999, 2000, and 2001 USDA cattle inventory numbers will best reflect the number of cattle in each State or unit since publication of the 1999 reapportionment rule.

The Board reviewed the February 28, 2001, USDA's Economic Research Service circular, "Livestock, Dairy and Poultry Situation and Outlook," to

determine proper importer representation. The Board recommended the use of a combined total of the average of the 1998, 1999, and 2000 cattle import data and the average of the 1998, 1999, and 2000 live animal equivalents for imported beef products. The method used to calculate the total number of live cattle equivalents was the same as that used in the previous reapportionment of the Board. The recommendation for importer representation is based on the most recent 3-year average of data available to the Board at its August 9, 2001, meeting to be consistent with the procedures used for domestic representation.

On October 19, 2001, AMS published in the **Federal Register** (66 FR 53124) for public comment a proposed rule providing for the adjustment in Board membership. The proposed rule was published with a request for comments to be submitted to USDA by December 18, 2001.

USDA received one comment concerning the proposed rule for Board reapportionment. The comment was from a cattle producer and supported the reapportionment plan.

Thus, the reapportionment of the Board in this final rule is unchanged from the proposed rule. This final rule decreases the number of representatives on the Board from 110 to 108. Five States—Alabama, Illinois, Kentucky, New York, and Wisconsin—lose one member each; two States and one unit—New Mexico, Wyoming, and Importer unit—gain one member each. In addition, because South Carolina no longer has sufficient cattle inventory to qualify for a position on the board independently, South Carolina will be merged with Georgia, a contiguous State that has only one member, to form a Southeast unit. The combined cattle inventory of South Carolina and Georgia will entitle the Southeast unit to two members on the Board, thus enabling both States to be represented. The States and units affected by the reapportionment plan and the current and revised member representation per unit are as follows:

States	Current Representation	Revised Representation
1. Alabama	2	1
2. Illinois	2	1
3. Kentucky	3	2
4. New Mexico ..	1	2
5. New York	2	1
6. Wisconsin	4	3
7. Wyoming	1	2
8. Importer unit	7	8
9. Southeast unit		2

States	Current Representation	Revised Representation
South Carolina	1	.....
Georgia	1	.....

Board representation for the entire 40 units is shown in the revised § 1260.141(a) contained herein.

The 2001 nomination and appointment process was in progress while the Board was developing its recommendations. Thus, the Board reapportionment as provided for under the rulemaking will be effective with 2002 nominations and appointments that will be effective early in the year 2003.

This action makes final the provisions of the proposed rule published at 66 FR 53124 on October 19, 2001.

List of Subjects in 7 CFR Part 1260

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

For reasons set forth in the preamble, 7 CFR part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR part 1260 continues to read as follows:

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

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 2002 Board nominations and the associated appointments effective early in the year 2003, the United States shall be divided into 39 geographical units and 1 unit representing importers, and the number of Board members from each unit shall be as follows:

CATTLE AND CALVES ¹

State/unit	(1,000 head)	Directors
1. Alabama	1,440	1
2. Arizona	833	
3. Arkansas	1,823	2
4. California	5,117	5
5. Colorado	3,167	3
6. Florida	1,820	2
7. Idaho	1,940	2
8. Illinois	1,497	1
9. Indiana	953	1
10. Iowa	3,683	4
11. Kansas	6,617	7
12. Kentucky	2,303	2
13. Louisiana	887	1

CATTLE AND CALVES¹—Continued

State/unit	(1,000 head)	Directors
14. Michigan	1,013	1
15. Minnesota	2,533	3
16. Mississippi	1,100	1
17. Missouri	4,333	4
18. Montana	2,583	3
19. Nebraska	6,650	7
20. Nevada	517	1
21. New Mexico	1,617	2
22. New York	1,433	1
23. North Carolina	957	1
24. North Dakota	1,927	2
25. Ohio	1,237	1
26. Oklahoma	5,183	5
27. Oregon	1,447	1
28. Pennsylvania	1,653	2
29. South Dakota	3,950	4
30. Tennessee	2,167	2
31. Texas	13,900	14
32. Utah	903	1
33. Virginia	1,650	2
34. Wisconsin	3,383	3
35. Wyoming	1,563	2
36. Northwest .....	.....	1
Alaska	11	.....
Hawaii	162	.....
Washington	1,187	.....
Total	1,408	.....
37. Northeast .....	.....	1
Connecticut	65	.....
Delaware	28	.....
Maine	99	.....
Massachusetts	55	.....
New Hampshire	45	.....
New Jersey	50	.....
Rhode Island	6	.....
Vermont	300	.....
Total	647	.....
38. Mid-Atlantic .....	.....	1
District of Co- lumbia	0	.....
Maryland	243	.....
West Virginia	420	.....
Total	663	.....
39. Southeast .....	.....	2
Georgia	1,293	.....
South Carolina	463	.....
Total	1,756	.....
40. Importer ²	7,654	8

¹ 1999, 2000, and 2001 average of January 1 cattle inventory data.

² 1998, 1999, and 2000 average of annual import data.

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Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317, 319, and 381

[Docket No.01-016N]

Use of Transglutaminase Enzyme and Pork Collagen as Binders in Certain Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Affirmation of effective date for direct final rule.

SUMMARY: On October 31, 2001, the Food Safety and Inspection Service (FSIS) published a direct final rule "Use of Transglutaminase Enzyme and Pork Collagen as Binders in Certain Meat and Poultry Products" in the **Federal Register**. This direct final rule notified the public of FSIS's intention to amend the Federal meat and poultry products inspection regulations to permit the use of one or both of these substances, in limited amounts, as binders in certain standardized meat and poultry products. This direct final rule also announced the Agency's intention to prescribe labeling requirements when transglutaminase enzyme (TG enzyme) is used to fabricate or reform cuts of meat or poultry. FSIS received one comment in response to the direct final rule. However, the comment was not an adverse comment or notice of intent to submit an adverse comment. Therefore, FSIS is affirming the December 31, 2001, effective date for this direct final rule.

EFFECTIVE DATE: December 31, 2001.

FOR FURTHER INFORMATION CONTACT:

Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700; (202) 205-0279

SUPPLEMENTARY INFORMATION:**Background**

On October 31, 2001, FSIS published a direct final rule "Use of Transglutaminase Enzyme and Pork Collagen as Binders in Certain Meat and Poultry Products" (66 FR 54912). This direct final amended the Federal meat inspection regulations to permit the use of pork collagen and TG enzyme, in limited amounts, as binders in certain standardized meat food products and amended the poultry products inspection regulations to permit the use of TG enzyme, in limited amounts, in certain standardized poultry products.

This direct final rule also amended the meat and poultry products inspection regulations to require that, when TG enzyme is used to fabricate or reform cuts of meat or poultry, the resulting product bear labeling to indicate that it has been formed from pieces of whole muscle meat, or that it has been reformed from a single cut. This direct final was in response to petitions submitted to the Agency by Ajinomoto, U.S.A., Inc. and AMPC, Corp.

On December 3, 2001, FSIS received a comment from Hogan & Hartson, L.L.P. on behalf of Ajinomoto USA, Inc., in response to the rulemaking. The commenter, also one of the petitioners, requested that FSIS provide clarification on the scope of the direct final rule. Specifically, Ajinomoto requested that FSIS clarify that the Agency intended to allow the use of TG enzyme in cured pork products under 9 CFR 319.104 when it published the direct final rule. The commenter noted that in its petition it had specifically requested that the standard of identity for cured pork products under 9 CFR 319.104 be amended to provide for the use of TG enzyme as a binder and provided data in support of this request. The commenter also expressed full support for the rule and stated that the comment was not intended to be an adverse comment but rather a clarification on the scope of the final rule.

When it began development of the direct final rule, FSIS had determined that, based on the data submitted by Ajinomoto, TG enzyme was suitable for use as a binder in sausages as provided under part 319 of title 9. While the rule was under development, Ajinomoto submitted additional data to support the use of TG enzyme in other standardized products, including cured pork products under 9 CFR 319.140. Upon review of the additional data, FSIS determined that, in addition to sausages as provided under part 319, TG enzyme was suitable for use in restructured meats (9 CFR 319.15(d)), roast beef parboiled and steam roasted (9 CFR 319.104) cooked sausages (9 CFR 319.180) and poultry rolls (9 CFR 381.159), and incorporated these findings into the direct final rule. However, when it incorporated these products in the direct final rule, the Agency was still reviewing the data submitted on the use of TG enzyme in cured pork products defined under 9 CFR 319.104. Thus, the direct final rule does not provide for the use of TG enzyme in these products. FSIS ultimately determined that TG enzyme is suitable for use as a binder in cured pork products under 9 CFR 319.104. In response to the commenter's request to clarify the scope of the direct final rule,