

domestic product added to the \$2.37 would result in a 2006 base fee of \$2.45 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, gross national product has been replaced by gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 2006 crop is estimated at 20,268,150 bales. The 2006 base fee was decreased 15 percent based on the estimated number of bales to be classed (1 percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum decreased adjustment of 15 percent). This percentage factor amounts to a 37 cents per bale reduction and was subtracted from the 2006 base fee of \$2.45 per bale, resulting in a fee of \$2.08 per bale.

However, with a fee of \$2.08 per bale, the projected operating reserve would be 35.74 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of \$2.08 must be reduced by 23 cents per bale, to \$1.85 per bale, to provide an ending accumulated operating reserve for the fiscal year of not more than 25 percent of the projected cost of operating the program. This would establish the 2006 season fee at \$1.85 per bale.

Accordingly, § 28.909, paragraph (b) would reflect the continuation of the HVI classification fee at \$1.85 per bale.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909 (c).

Growers or their designated agents receiving classification data would continue to incur no additional fees if classification data is requested only once. The fee for each additional retrieval of classification data in § 28.910 would remain at 5 cents per bale. The fee in § 28.910 (b) for an owner receiving classification data from the National database would remain at 5 cents per bale, and the minimum charge of \$5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910 (c) concerning the fee for new classification memoranda issued from the National

database for the business convenience of an owner without reclassification of the cotton will remain the same at 15 cents per bale or a minimum of \$5.00 per sheet.

The fee for review classification in § 28.911 would be maintained at \$1.85 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

Pursuant to 5 U.S.C. 553, good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because this rule maintains user fees for 2006 crop cotton classification services under the Cotton Statistics and Estimates Act at the same level as in 2005 and a 15-day comment period was provided for public comment and one favorable comment was received.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

■ For the reasons set forth in the preamble, 7 CFR Part 28 is amended as follows:

PART 28—[AMENDED]

■ 1. The authority citation for 7 CFR Part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 471–476.

■ 2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is \$1.85 per bale.

* * * * *

■ 3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is \$1.85 per bale.

* * * * *

Dated: August 9, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–13476 Filed 8–15–06; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS–01–06]

Amendment to the Beef Promotion and Research Rules and Regulations—Final Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Beef Promotion and Research Order (Order) established under the Beef Promotion and Research Act of 1985 (Act) to reduce assessment levels for imported beef and beef products based on revised determinations of live animal equivalencies and to update and expand the Harmonized Tariff System (HTS) numbers and categories, which identify imported live cattle, beef, and beef products to conform with recent updates in the numbers and categories used by the U.S. Customs and Border Protection (Customs).

DATES: *Effective Date:* September 15, 2006.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, Room 2638–S, Livestock and Seed Program, Agricultural Marketing Service (AMS), USDA, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; facsimile 202/720–1125; telephone 202/720–1115, or by e-mail at *Kenneth.Payne@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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule 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.

Regulatory Flexibility Act

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 effect of the Order upon small entities was discussed in the July 18, 1986 **Federal Register** [51 FR 26132]. 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.

There are approximately 270 importers who import beef or edible beef products into the United States and 198 importers who import live cattle into the United States. The majority of these operations subject to the Order are considered small businesses under the criteria established by the Small Business Administration (SBA)[13 CFR 121.201]. SBA defines small agricultural service firms as those having annual receipts of \$6.5 million or less.

The final rule will impose no significant burden on the industry. It will merely update and expand the HTS numbers and categories to conform to recent updates in the numbers and categories used by Customs. This final rule will also adjust the live animal equivalencies used to determine the amount of assessments collected on imported beef and beef products. This adjustment reflects an increase in the average dressed weight of cows slaughtered under Federal inspection that has occurred since the inception of the Beef Checkoff Program. Accordingly, the Administrator of AMS has determined that this action will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations [5 CFR part 1320] that implement the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements contained in the Order and Rules and Regulations have previously been approved by OMB under OMB control number 0581-0202 and merged into OMB control number 0581-0093.

Background

The Act authorized the establishment of a national beef promotion and research program. The final Order was published in the **Federal Register** on July 18, 1986, (51 FR 21632) and the collection of assessments began on October 1, 1986. The program is administered by the Cattlemen's Beef

Promotion and Research Board (Board) appointed by the Secretary of Agriculture (Secretary) from industry nominations composed of 104 cattle producers and importers. The program is funded by a \$1-per-head assessment on producer marketing of cattle in the United States and on imported cattle as well as an equivalent amount on imported beef and beef products.

Importers pay assessments on imported cattle, beef, and beef products. Customs collects and remits the assessment to the Board. The term "importer" is defined as "any person who imports cattle, beef, or beef products from outside the United States." Imported beef or beef products is defined as "products which are imported into the United States which the Secretary determines contain a substantial amount of beef including those products which have been assigned one or more of the following numbers in the Tariff Schedule of the United States."

In 1989, Customs implemented a new numbering system, the HTS, to replace the Tariff Schedule of the United States (TSUS) system. The Department of Agriculture (USDA) updated the TSUS to HTS, in a final rule, published in the **Federal Register** on April 20, 1989, (54 FR 15915) to conform with updates made by Customs. Since the inception of HTS, it has undergone many changes. First, the original 11 digit system has been replaced with a 10 digit system. Additionally, most of the categories regarding imported beef and beef products have been subdivided and the new categories have been assigned HTS numbers. The purpose of this final rule is to update, expand, and revise the table found under § 1260.172 (7 CFR 1260.172) to reflect the current HTS numbers.

As a result of these changes to HTS, there are 20 new categories that cover imported live cattle subject to assessment compared with the previous 8 categories. The 30 categories identifying imported beef and beef products have been expanded to 54 categories.

This final rule simply updates and expands the chart published in the 1989 final rule to conform with recent changes to the HTS numbering system and revises the live weight equivalents used to calculate import assessments. Importers are currently paying the same assessment level for imported beef and beef products that was established when the Order was first published in 1986. At that time, the average dressed weight of cows slaughtered under Federal inspection was determined to be 509 pounds. USDA determined that using

the average dressed weight of domestic cows slaughtered under Federal inspection would be most suitable because about 90 percent of imported beef and beef products were similar to domestic cow beef.

The Act requires that assessments on imported beef and beef products be determined by converting such imports into live animal equivalents to ascertain the corresponding number of head of cattle. Carcass weight is the principle factor in calculating live animal equivalents. Under the Order, the Board may increase or decrease the level of assessments for imported beef and beef products based upon revised determination of live animal equivalencies.

Prior to publishing the proposed rule, USDA received two recommendations concerning importer assessments. The Meat Importers Council of America (MICA) requested to increase the live animal equivalency rate that would reduce the amount of assessments collected from importers of beef and beef products. MICA suggests using the dressed cow weight for calendar year 2000 to recalculate levels of assessments. This average would be 579 pounds. In updating the average dressed cow weight for calendar year 2004, the average would be 614 pounds. The Board recommends using an average dressed cow weight from 1987 to the most current data. The Board states that "establishing an average over this period of time takes into account short term highs and lows due to the cattle cycle, weather effects, and feed prices." This average would be 555 pounds.

Comments

On October 5, 2005, USDA published in the **Federal Register** (70 FR 58095) a proposed rule to amend the Beef Promotion and Research Order (Order) established under the Beef Promotion and Research Act of 1985 (Act) to reduce assessment levels for imported beef and beef products based on revised determinations of live animal equivalencies and to update and expand the HTS numbers and categories, which identify imported live cattle, beef, and beef products to conform with recent updates in the numbers and categories used by the Customs.

USDA received in a timely manner two comments, one from the Executive Director of the Meat Importers Council of America (MICA) and another from an interested party. The two comments have been posted on AMS' Web site at <http://www.ams.usda.gov/lsg/mpb/rp-beef.htm>. The changes suggested by commenters are discussed below.

Discussion of Comments

The USDA proposed establishing the average carcass weight using a 5-year weighted average carcass weight of domestic cows. Although MICA supports the reduction of assessment levels for imported beef and beef products, MICA contends the basis for determining the assessment should not be the proposed 5-year weighted average carcass weight of all cows slaughtered in the U.S. under Federal inspection because imported beef is derived from a range of classes of stock, including steers, heifers and bulls as well as cows. The commenter recommended that the formula be based on a mix of cow and steer weights. Thus, MICA proposed that the carcass weight used to calculate the assessments on imported beef be based on a ratio of one-third (1/3) of the 5-year average carcass weight of steers and two-thirds (2/3) of the 5-year average carcass weight of cows which would result in an average carcass weight of approximately 663 pounds. While this does not take into account bulls and heifers, the commenter feels that the differences in these two classes would probably balance each other out and, thus, would not materially affect the calculation.

USDA reviewed total imported beef and veal production on a carcass weight equivalent to identify the top 10 countries exporting to the United States in 2005. These countries accounted for more than 99 percent of U.S. beef and veal imports for that year. We then calculated the average carcass weight of cattle slaughtered in each country for the years 2000–2004 by dividing total beef production by the total number of cattle slaughtered. Based on our calculations, the average carcass weight of these 10 exporting countries was 592 pounds during this period, which is the same weight published in the proposed rule. In other words, accounting for all cattle (whether steers, heifers, cows, or bulls) produced by the leading countries from which the United States imports beef leads to the same carcass weight equivalent as that in the proposed rule. Using the recent 5-year average carcass weight of all domestic cows slaughtered in the U.S. under Federal inspection is very representative of the average carcass weight of for those countries importing to the U.S. Consequently, the comment is not adopted.

While expressing general misgivings concerning the program, the second commenter suggested that the assessment rate should be increased to \$10 per head. The Act provides that the assessment rate for live imported cattle

be \$1 per head. Consequently, this comment is not adopted.

Accordingly, it is appropriate to use a 5-year average dressed weight of domestic cows slaughtered under Federal inspection of 592 pounds to calculate assessments on imported beef and beef products.

List of Subjects in 7 CFR part 1260

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Meat and meat products, Beef, and Beef products.

■ For the reasons set forth in the preamble, title 7 of the 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. 2901–2911.

■ 2. Paragraph (b)(2) of § 1260.172 is revised to read as follows:

§ 1260.172 Assessments.

* * * * *

(b) * * *

(2) The assessment rates for imported cattle, beef, and beef products are as follows:

IMPORTED LIVE CATTLE

HTS No.	Assessment rate (head)
0102.10.0010	\$1.00
0102.10.0020	1.00
0102.10.0030	1.00
0102.10.0050	1.00
0102.90.2011	1.00
0102.90.2012	1.00
0102.90.4024	1.00
0102.90.4028	1.00
0102.90.4034	1.00
0102.90.4038	1.00
0102.90.4054	1.00
0102.90.4058	1.00
0102.90.4062	1.00
0102.90.4064	1.00
0102.90.4066	1.00
0102.90.4068	1.00
0102.90.4072	1.00
0102.90.4074	1.00
0102.90.4082	1.00
0102.90.4084	1.00

IMPORTED BEEF AND BEEF PRODUCTS

HTS No.	Assessment rate per kg
0201.10.0510	.01459542
0201.10.0590	.00379102
0201.10.1010	.01459542
0201.10.1090	.00379102

IMPORTED BEEF AND BEEF PRODUCTS—Continued

HTS No.	Assessment rate per kg
0201.10.5010	.01459542
0201.10.5090	.00511787
0201.20.0200	.00530743
0201.20.0400	.00511787
0201.20.0600	.00379102
0201.20.1000	.00530743
0201.20.3000	.00511787
0201.20.5000	.00379102
0201.20.8090	.00379102
0201.30.0200	.00530743
0201.30.0400	.00511787
0201.30.0600	.00379102
0201.30.1000	.00530743
0201.30.3000	.00511787
0201.30.5000	.00511787
0201.30.8090	.00511787
0202.10.0510	.01459542
0202.10.0590	.00379102
0202.10.1010	.01459542
0202.10.1090	.00370102
0202.10.5010	.01459542
0202.10.5090	.00379102
0202.20.0200	.00530743
0202.20.0400	.00511787
0202.20.0600	.00379102
0202.20.1000	.00530743
0202.20.3000	.00511787
0202.20.5000	.00379102
0202.20.8000	.00379102
0202.30.0200	.00530743
0202.30.0400	.00511787
0202.30.0600	.00527837
0202.30.1000	.00530743
0202.30.3000	.00511787
0202.30.5000	.00511787
0202.30.8000	.00379102
0206.10.0000	.00379102
0206.21.0000	.00379102
0206.22.0000	.00379102
0206.29.0000	.00379102
0210.20.0000	.00615701
1601.00.4010	.00473877
1601.00.4090	.00473877
1601.00.6020	.00473877
1602.50.0900	.00663428
1602.50.1020	.00663428
1602.50.1040	.00663428
1602.50.2020	.00701388
1602.50.2040	.00701388
1602.50.6000	.00720293

* * * * *
Dated: August 9, 2006.

Lloyd C. Day,
Administrator, Agricultural Marketing Service.

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