

COOPERATIVE EXTENSION
UNIVERSITY OF CALIFORNIA

DAVIS, CALIFORNIA 95616

February 22, 1988

TO: County Directors

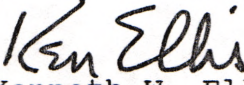
RE: Beef Referendum

Attached is further information and backup forms in preparation for the May 10th Beef Referendum.

Please retain the backup forms for reproduction should that be necessary on voting day.

We expect packets of ballots and forms for each county to be sent to our "State Office" for distribution to you at a later date.

Sincerely,


Kenneth W. Ellis
Regional Director

KWE:rmam

cc: G. Findley
Steve Berry
Duncan McMartin

BR:1

BEEF REFERENDUM

REGISTRATION

If voting as an *individual*, please print your name, address (including county), and home phone number in the spaces provided.
If voting on behalf of an *entity (partnership, corporation, estate, etc.)*, print its name, address (including county), and phone number in the spaces provided.

NAME	TELEPHONE	
ADDRESS (Street, P.O. Box or Route No., City, County, State, ZIP)	COUNTY	STATUS ("X" one) ☐ Producer ☐ Importer

CERTIFICATION STATEMENT

I HEREBY CERTIFY that at some time during the representative period (October 1, 1986 through March 31, 1988) I, or the partnership, corporation, estate, etc., that I am authorized to represent, owned or acquired ownership of cattle (producer) or imported cattle, beef, or beef products into the United States (importer); and that I am voting only once in this referendum in the same capacity registered above. I FURTHER CERTIFY that the information contained in this form is true, complete, and correct to the best of my knowledge and belief.

SIGNATURE	TITLE (if applicable)	DATE
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Failure to complete, sign, and return the Registration and Certification Statement will invalidate the Ballot.
Any false statement or misrepresentation may result in a fine of not more than \$10,000.00 or imprisonment for not more than 5 years, or both (18 U. S. C. 1001).

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BEEF REFERENDUM

INSTRUCTIONS TO VOTERS

Please read carefully

1. If voting as an *individual*, you must vote in the county Extension Service (ES) Office in the county in which you reside, or the county ES Office serving the county in which you reside.
2. If voting on behalf of an *entity* (*partnership, corporation, estate, etc.*) you must vote in the county ES Office in which it is located, or the county ES Office serving the county in which it is located.
3. On the envelope marked *Beef Referendum* complete the required Registration information and sign the Certification Statement.
4. Mark the "Ballot" below.
5. Fold in half and insert into the envelope marked *Beef Ballot* and seal.
6. Insert the *Beef Ballot* envelope into the envelope marked *Beef Referendum*, seal, and deposit into the "Ballot Box."

BALLOT

U. S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

1988 REFERENDUM ON THE BEEF PROMOTION AND RESEARCH ORDER

Do you support continuation of the Beef Promotion and Research Order? ("X" Yes or No)

☐ YES ☐ NO

Insert this BALLOT into the envelope marked *Beef Ballot*, seal,
and place into the envelope marked *Beef Referendum*.

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Beef Report

Friday
July 18, 1986

Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1260

Beef Promotion and Research Order; Final Rule

4907-1

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

Beef Promotion and Research Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Beef Promotion and Research Act of 1985 (Act), approved December 23, 1985, authorizes the establishment of a national, industry-funded and operated beef promotion and research program. On February 14, 1986, the Agricultural Marketing Service (AMS) published an invitation to submit proposals for a beef promotion and research order. AMS received an industry proposal which was published for public comment in the March 14, 1986, issue of the *Federal Register*. A public meeting was held April 17, 1986, to facilitate a better understanding of the proposed order and to solicit comments on that proposal.

After evaluating all comments, the transcript from the public meeting, and other available material, the proposed order, with minor modifications, as described herein, has been adopted as a final rule.

EFFECTIVE DATE: This final rule is effective July 18, 1986, except that the provisions in § 1260.172 for collection of assessments will be effective on October 1, 1986. Additionally, §§ 1260.201 and 1260.202, which implement the reporting and recordkeeping requirements will not become effective prior to Office of Management and Budget approval.

ADDRESSES: Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, Room 2610-S, Washington, DC 20250, (202) 447-2650. Those organizations wishing to apply to be certified by the Board as a Qualified State Beef Council may submit a request to the Board in care of the Livestock and Seed Division at the above address.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, (202) 447-2650.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Invitation to submit proposals published February 14, 1986 (51 FR 5543).

Proposed Rule—Certification and Nomination Procedures for Cattlemen's Beef Promotion and Research Board published February 21, 1986 (51 FR 6258).

Final Rule—Certification and Nomination Procedures for Cattlemen's Beef Promotion

and Research Board published April 4, 1986 (51 FR 11557).

Proposed Rule—Beef Promotion and Research Order published March 14, 1986 (51 FR 8984).

This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation No. 1512-1, and is hereby classified as a nonmajor rule because the annual economic impact will be less than \$100 million. Accordingly, a regulatory impact analysis is not required. This action was also reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the RFA.

The Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 *et seq.*) provides for the establishment of a coordinated program of promotion and research designed to strengthen the beef industry's position in the marketplace and to maintain and expand foreign and domestic markets and uses for beef and beef products. This program will be financed by assessments on domestic and imported cattle and on imported beef and beef products. The Act requires that each person making payment to a producer for cattle shall collect an assessment from the producer and remit such assessment to a qualified State beef council or the Board established under the Act. It also provides that each importer of cattle, beef, or beef products shall pay an assessment in the manner prescribed by the order issued by the Secretary. The assessment rate will be \$1 per head of cattle or the equivalent thereof in the case of imported beef or beef products. Credit will be allowed for assessments paid to qualified State beef research and promotion programs. The Act also provides authority to require certain records and reports which are necessary to administer the program properly.

The Act specifies in detail required terms which must be included in the beef research and promotion order. It also authorizes the Secretary to include such terms and conditions, not inconsistent with the provisions of the statute, as are necessary to effectuate the provisions of the order. The Act is very specific in certain areas such as the procedure for issuing an order, composition of the Board and Operating Committee, powers and duties of the Board and Committee, source and collection of funds, level of assessment, and referendum requirements.

The statute provides that once a proposal for a beef research and promotion order is received, the Secretary shall publish such proposal for public comment. It also provides that after notice and opportunity for public comment the Secretary shall issue a beef promotion and research order.

Not later than 22 months after the issuance of an order under the Act the Secretary is required to conduct a referendum among producers and importers to determine whether they favor continuation of the program under the order. After such initial referendum, the Secretary is also authorized to conduct referenda to determine whether a termination or suspension of the research and promotion program is warranted.

Information available to the Department indicates that a substantial number of cattle producers can be classified as small businesses. Nearly all of the action markets, dealers, order buyers, packers, and importers are considered small businesses under the RFA.

Beef promotion and research funded by assessments is not a new concept. Thirty-eight States already have organizations conducting beef promotion and research, and the proposal for this legislation was generated by the cattle industry. Therefore, the Act provides that this national research and promotion program be conducted in conjunction with existing programs, and encourages cooperation and coordination between State and national beef promotion and research entities and the Board established under this Act. In recognition of existing State programs, the Beef Promotion and Research Act provides that producers participating in established qualified State programs shall receive credit of up to 50 cents per head for contributions to such programs.

The total estimated market value of cattle and imported beef and beef products sold in the United States is about \$33 billion per year. The total estimated number of cattle sold in the United States (including imported cattle and live cattle equivalents of imported beef and beef products) is about 60 million head per year. Therefore, it is estimated that the promotion and research program will raise approximately \$60 million per year. This is less than two-tenths of one percent of the annual market value of cattle, beef, and beef products sold in the United States. The net impact of the national program on persons directly affected would actually be considerably less because it is estimated that

approximately \$19 million is already being assessed under existing State programs, and it is anticipated that producers under such programs will be eligible for credit for assessments collected under the programs.

The reporting and recordkeeping requirements should not necessitate any appreciable cost or effort. Persons who purchase cattle on a regular basis generally maintain a system of records which already contains the information required to administer a program under the Beef Promotion and Research Act. Also, very little additional recordkeeping or reporting will be required of importers. The U.S. Customs Service will serve as the collecting agent for importer assessments. It is anticipated that an existing reporting form and procedure will be utilized to provide a one or two line entry for recording such assessments.

In determining that the research and promotion program under the order will not have a significant economic impact on a substantial number of small entities, all the issues discussed above were considered. The order provisions were closely reviewed, and every effort was made to minimize any unnecessary costs or duplicative requirements. Although the promotion and research program will impose some additional costs on producers and importers, it is anticipated that the program will strengthen the beef industry and will expand domestic and foreign markets. Therefore, such additional costs, particularly when viewed in light of the annual market value of cattle, beef, and beef products, should be more than offset by the benefits derived from expanded markets and sales.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), regulations implementing the reporting and recordkeeping provisions included in this final rule will be submitted for approval to the Office of Management and Budget (OMB). These implementing regulations will not become effective prior to OMB approval.

Background

The Beef Promotion and Research Act (Title XVI, Subtitle A, of the Food Security Act of 1985) approved December 23, 1985, requires the Secretary of Agriculture to establish a national beef promotion and research program. The program will be funded by a \$1 per head assessment on cattle marketed in the United States, and an equivalent assessment on imported cattle, beef, and beef products.

The Act provides for submission of proposals for a beef promotion and research order by industry organizations or any interested persons. The Act requires that such order provide for the establishment of a Cattleman's Beef Promotion and Research Board. The Board would be appointed by the Secretary and would be comprised of both cattle producers nominated by State cattle producer organizations and general farm organizations, and importers nominated by importer organizations.

The Agricultural Marketing Service issued an invitation to submit proposals for an order in the February 14, 1986, issue of the **Federal Register**. In response to the invitation to submit proposals, one proposed order was received from the National Cattleman's Association. As provided in the Act, the Agricultural Marketing Service published this proposed order for comment on March 14, 1986. Additionally, a public meeting was held on April 17, 1986, to provide an opportunity for a full discussion on the proposal and to facilitate a better understanding of the proposed rule and to solicit comments.

The Department of Agriculture received 122 written comments concerning the proposed Beef Promotion and Research Order. Forty-nine commenters, including individuals, cattle associations, State beef councils, breed associations, and an export organization expressed support for the proposed Beef Promotion and Research Order as it was published. Twenty-five commenters, primarily individuals and livestock auction markets, opposed the mandatory assessments. The remaining commenters, which included cattle associations, general farm organizations, State beef councils, importer organizations, Senators, Members of Congress, individuals, livestock dealers and market agencies, generally supported the proposed Beef Promotion and Research Order with certain qualifications.

A number of technical changes of a non-substantive nature were made in style, format, and organization. The order now consists of one subpart rather than six. The provision concerning expenses, which had appeared as § 1260.171, has been redesignated as § 1260.151. The provision relating to promotion, research, consumer information and industry information, which had appeared as § 1260.191, has been redesignated as § 1260.169. A new provision concerning the removal from office of Board members and other appointees under the order has been

added as § 1260.213, and, therefore, former §§ 1260.213 through 1260.216 have been renumbered accordingly.

The substantive changes suggested by commenters are discussed below, together with changes made upon review of the proposed order by the agency.

The Act provides that each person who makes payment to a producer for cattle shall collect an assessment from the producer. The term "collecting person" was defined in the proposed order as the person responsible for collecting assessments under the order and by listing and further defining various persons who might in individual transactions be collecting persons. This listing is unnecessary and could under certain circumstances be misleading. In this final rule the term "collecting person" is defined simply as the person who makes payment to a producer for cattle, unless by regulations approved by the Secretary another person is made responsible, in a manner consistent with the Act, for collecting the assessment.

Section 5(6) of the Act requires that the Operating Committee, in order to ensure coordination and efficient use of funds, contract with "established national nonprofit industry-governed organizations" to carry out its activities under the Act. The term "established national nonprofit industry-governed organizations" is not defined in the Act. One comment expressed the view that the definition in § 1260.113 of the proposed order for such organizations was unduly restrictive in that it ruled out any organization whose board membership is not made up of a majority of producers, i.e., persons who own or acquire ownership of cattle. This comment has substantial merit. One of the express purposes of the Act is to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products. The proposed definition of "established national nonprofit industry-governed organizations" is too restrictive in that it would preclude the Operating Committee's ability to contract with organizations involved in the beef industry which have substantial knowledge, skill, and experience relating to the marketing of beef and beef products. Therefore, the definition has been modified to delete the requirement that the boards of directors of such organizations be composed of a majority of producers. Several additional comments suggested that the definition should be expanded to include regional and State organizations. The Act, however, is

specific in requiring that such industry organizations must be national in scope. Therefore, this proposed change has not been adopted.

Many comments were filed in opposition to the definition of "producer" in the proposed order. In general, these comments expressed the position that many persons engaged in the purchase and sale of livestock would be deemed producers under the order, even though they take title to cattle only for a brief period of time in the process of marketing and do so for the primary purpose of facilitating the transfer of ownership from the seller of cattle to a third party. There is considerable merit to this position. The agency does not believe that it was the intent of the Act to include such persons in the definition of "producer." Persons who engage in the marketing of cattle in connection with such marketing businesses do not generally hold such cattle for the purpose of adding value to the cattle. Accordingly, the definition of "producer" has been revised to exclude persons who acquire ownership of cattle if they acquire ownership for the purpose of facilitating a transfer of ownership from the seller to a third person and who resell the cattle within ten days. Such persons are also required to certify that they in fact come within this exception.

Several comments expressed the view that the proposed definition of the term "importer" should be clarified. One comment suggested that the definition set forth in the U.S. Customs regulations be adopted, thereby making it clear that an "importer" is the person primarily responsible for paying the duty. Although there is some merit in this view, there appears to be no reason to alter the definition set forth in the proposed rule, which is also the definition contained in the Act. In identifying an "importer" for purposes of the order, the Board may, if warranted, rely upon the U.S. Customs regulations as a general guide. The person engaged in the business of importing cattle, beef or beef products from outside the United States will generally, if not always, be the person primarily liable for paying the duty, if any, or the person otherwise responsible for complying with U.S. Customs requirements. In addition, the Board may prescribe, with the approval of the Secretary, such implementing regulations deemed necessary as a result of the Board's experience in administering the provisions of the Act and order. Accordingly, the definition of the term "importer" set forth in the proposed order is adopted in this final rule.

The tariff schedule numbers for live cattle and the assessments rates for both live cattle and imported beef products have been deleted from the definition of "imported beef and beef products" in proposed § 1260.121 because their inclusion in the definition section is unnecessary. The tariff schedule numbers and assessment rates for both live cattle and beef and beef products have, however, been included in § 1260.172, the assessment provision of this final rule.

One comment indicated that some clarification was necessary to fulfill the apparent intention of the proposal that only imported products containing a substantial amount of beef would be subject to the order's provisions. This comment is correct in pointing out what was clearly the intent of the proposed definition. Therefore, the definition has been modified to accomplish the necessary clarification by deleting the words "or beef products."

Paragraphs (b) and (c) of proposed § 1260.121 of the proposed order have also been deleted in this final rule. Paragraph (b) merely sets forth the Secretary's inherent authority to amend the order provisions to add or delete imported beef products from coverage under the order if warranted or to make any conforming changes necessitated by changes in the tariff schedule itself. Consequently, it was not necessary. Paragraph (c) has also been deleted from proposed § 1260.121, but an analogous provision has been inserted as paragraph (b)(3) of § 1260.172 which deals with assessments.

Numerous comments were received with respect to the structure of the Board and of the Operating Committee. In particular, the structure for representation of the dairy and importer segments of the industry respectively.

Importers contended that the number of importer seats on the Board should be determined based upon the volume of imported beef relative to the total volume of beef marketed or consumed in the U.S. each year. In the alternative, importers' comments contend that there should be a correlation between the amount of money which will be collected from importers and the amount of money which will be collected from domestic producers under the program. The Act provides that producer representation on the Board shall be determined based upon total cattle inventory. Importer representation is to be determined on a proportional basis, by converting imported beef and beef products to live animal equivalencies plus imported live cattle. The Act does not authorize the calculation of importer

seats based upon the factors or combinations of factors suggested by the importer comments.

Importer representation is determined by converting imported beef and beef products into live animal equivalencies as described below in the discussion concerning assessments, and adding to that the number of live cattle imported into the United States using 1985 statistics as published in the Foreign Agricultural Circular "Dairy, Livestock, and Poultry" dated February 1986. Pursuant to this subpart, importers shall receive representation on a basis proportional to domestic producers; that is, one member for the first 500,000 head and an additional member for each additional one million head of cattle. Total importer representation on the Board shall initially be five members. If the number of imported cattle and the volume of imported beef and beef products changes, importer representation will change in accordance with section 1260.141 of this subpart.

Comments submitted by representatives of the dairy sector of the industry expressed the view that since dairy cattle represent nearly 21% of the total U.S. cattle population, the dairy industry should be guaranteed 23 seats on the Board. However, the Act provides for the appointment of members to the Board from nominations submitted by eligible State organizations certified under the Act. Guarantees such as the one suggested by these comments would be inconsistent with this statutory scheme. The Act does not provide for any segment of the industry to receive a guaranteed number of seats on the Board. The overall composition of the cattle industry will be one factor considered in appointing members to serve on the Board.

Several comments were received from Senators, Members of Congress, Agricultural Cooperative Extension agents, beef associations and individuals concerning the combination of States within the Northeast and Mid-Atlantic Units as set forth in the proposed order. These comments expressed the view that the beef industry in the States of Connecticut and Rhode Island is more similar to the beef industry of the other four New England States in the Northeast Unit than to the industry in the Mid-Atlantic Unit. The Act requires that a State which has a total inventory of fewer than 500,000 cattle be grouped, as far as practicable, with other States into geographically contiguous Units in a manner prescribed in the order. The agency believes that the make-up of the

units contained in the proposed order is the most practical arrangement for establishing geographically contiguous units and meeting the representation requirements of the Act with respect to the initial Board. To remove Connecticut and Rhode Island from the Mid-Atlantic Unit would leave this Unit with less than enough cattle to meet the requirements of a Unit as specified in the Act, and necessitate realignments which are not practicable in light of the statutory scheme.

Finally, several comments contended that importers should be guaranteed a seat on the Operating Committee. The Act provides that the Operating Committee shall consist of ten members elected by a federation that includes the qualified State beef councils and ten members elected by the Board. The agency has determined that it would be inconsistent with the purposes of the Act to restrict in the manner suggested the authority of the Board to elect 10 of its members to the Operating Committee or to provide importers or any other group with a guaranteed seat or seats on the committee. Although the proposed order provides that the Chairperson, Vice-Chairperson and Treasurer of the Board shall be seated on the committee, this is not inconsistent with the Board's authority since in electing its own officers, it will also be electing three of its ten Operating Committee members. All members of the Board, including importer members, will be eligible to vote for Board officers.

For the reasons set forth above, the changes proposed by the above-described comments to the provisions of the proposed order dealing with the structure of the Board and Operating Committee and representation on those two entities have not been adopted in this final rule.

Comments were received from several individuals, a State Department of Agriculture, a national farm organization, a market agency, and importers relating to the provisions dealing with expenses under the proposed order. The views expressed in those comments included suggestions that: (1) Total administrative costs of the program be limited to 10 percent of the estimated assessment to be collected in one year; (2) qualifying State beef councils and collecting persons be reimbursed for their administrative costs; and (3) no funds collected from importers be allowed to be used to expand foreign markets, and any funds used to expand foreign markets only be used for generic advertising of beef and beef products and not to promote U.S. beef products.

The Act provides that the total costs for collection of assessments and administrative staff incurred by the Board shall not exceed five percent of the projected total assessments to be collected for any given fiscal year. The Act and the order also require that to insure the most efficient use of assessments the committee is required to contract with established national nonprofit industry-governed organizations when implementing plans and projects for research and promotion. Similarly, the Act and the order authorize the fullest utilization of the resources, staff and facilities of existing industry organizations. These provisions in conjunction with the Secretary's authority to review the Board's budgets will insure appropriate restraint on administrative expenses.

One commenter asserted that collecting persons and qualified State beef councils should be reimbursed for costs associated with the collection of assessments. The Act requires that persons designated as collecting persons under the order collect and remit the required assessments. No authority is contained in the Act for the reimbursement of costs incurred by such persons. The pertinent order provisions are intended to minimize any burden imposed on collecting persons. Such costs should be minimal, and it is expected that the implementing regulations will be developed with this in mind. Similarly, the costs to qualified State beef councils would not be significantly greater than the costs of collecting assessments under existing State programs. Accordingly, this proposed modification is not adopted.

Several comments were received from importer associations and exporters of beef to the U.S. asserting that the Act should not be interpreted to allow the use of funds collected under the order to be used for the promotion of beef and beef products in foreign markets. They suggest in the alternative that promotional activities in foreign markets should involve only generic beef promotion. This view is, however, contrary to one of the principal purposes of the Act; that is, to increase foreign markets for U.S. beef and beef products. Accordingly, the limitations on promotional activities proposed by these comments are not adopted in this final rule.

One comment proposed that there be a common collection point for importer assessments, one common remittance date, and a single late payment penalty for assessments due under both the Beef Promotion and Research Act and the Pork Promotion, Research and

Consumer Information Act. These two Acts require the issuance of separate orders and the establishment of separate governing bodies which are responsible for the collection of assessments under each order's enabling legislation. The authorized programs while similar are not identical. While coordination between the two may be desirable, such coordination can only be achieved through coordination between the officials of the two programs. It would be inappropriate to establish the requirements proposed by the commenters in either order.

One State has a beef promotion program whose assessment is calculated as a percentage of the value of the cattle sold. The State Department of Agriculture of this State, its beef council, and its cattlemen's association suggested that the method of granting credits to producers for payments to qualified State beef councils be modified to allow credit for the average assessment paid by all producers in that State. The Act provides that a producer may receive credit for payments made by that producer to a qualified State beef program. The proposal set forth in these comments is not authorized by the Act, and accordingly, is not adopted in this final rule. However, the order would allow producers to average their State assessments paid on a given transaction, so that if a producer pays a State assessment of 40 cents on one animal and 60 cents on another, the producer may receive an average credit of 50 cents for each animal.

The proposed order requires that a State beef council must, in order to be recognized as a qualified State beef council, agree to forward any refunds requested by producers to the Board. No comments were received concerning this provision. Coordinating the assessment, credit, and refund provisions of the State programs with the mandatory national program is a difficult task. The order must provide a mechanism which assures that every producer will be assessed 1 dollar per head to promote beef and beef products and also permit the coordination of the order with existing State programs. The simplest and most direct way of accomplishing this goal is to require that all State programs which petition to be recognized as qualified State beef councils agree to forward producer refunds to the Board. This approach assures efficient and equitable administration of the assessment provisions of the Act and order and assures effective implementation of the credit provisions by allowing producers to receive the authorized credit for

payment to State programs at the same time.

It was suggested by one State beef council that the order allow those States which use brand inspectors to collect State assessments to continue to use brand inspectors as collecting persons. The Act contemplates that the collecting person will ordinarily be the person making payment to a cattle producer, but it also contemplates that existing collection mechanisms will be utilized by the Board to the extent possible. This final rule authorizes the issuance of regulations which would permit the collection of assessments by brand inspectors in certain states, and also release the person making payment to the producer of the responsibility of collecting assessments in those States.

The rate of assessment for imported beef and beef products was the subject of much concern at the public meeting and in comments submitted to the Department. 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. Importer membership on the Board also will be based on the same calculation of live animal equivalents. Carcass weight is the principal factor in calculating live animal equivalents. An average weight of some kind is obviously desirable. Among the alternatives are: (1) The actual average carcass weight of cattle from each exporting country, (2) a weighted average carcass weight of cattle from exporting countries, (3) the average carcass weight of all cattle slaughtered in the United States, and (4) the average carcass weight of all cows slaughtered in the United States.

The proponents of the order used a weighted average carcass weight based upon the reported average carcass weight of all cattle slaughtered in the major exporting countries. Comments from importer representatives pointed out that the data upon which the proponent's calculations were apparently based contained an error in the average carcass weight of one of the exporting countries. The agency reviewed data provided by the Economic Research Service and the Foreign Agricultural Service of the USDA and found that in fact there was an error and that the weighted average carcass weight should have been heavier.

The importers asserted further that the use of the average carcass weights of all cattle slaughtered in the exporting countries is not a valid method because

many exporting countries export beef from larger cattle than are raised for domestic consumption. The best available information indicates that cattle slaughtered for export to the U.S. are often larger than cattle slaughtered for domestic consumption in the exporting countries. However, reliable data on average carcass weights of cattle slaughtered for export in the various exporting countries is not available at the present time. Additionally, there is little consistency in the methods used by each of the exporting countries to calculate the average carcass weight of all cattle slaughtered in each such country. Some countries include all cattle slaughtered, others include only adult cattle slaughtered, still others calculate their average carcass weight by regions of the country or seasons of the year. The data for cattle slaughtered for export to the U.S. is even more inconsistent. Further, such data is sparse.

The agency has concluded that either the average carcass weight of all cattle slaughtered in the United States or the average carcass weight of cows slaughtered in the U.S. would be a more appropriate and desirable basis for determining live animal equivalents. This information is officially published and supporting data are readily available. Additionally, the average carcass weight of domestic cattle is not subject to variations in carcass weights resulting from possible differing methods of calculations in any of the exporting countries. Further, it has been determined that the average carcass weight of domestic cows would be the most suitable because about 90 percent of imported beef and beef products are similar to domestic cow beef, and the average carcass weight of domestic cows is very comparable to the estimated average carcass weight of cattle slaughtered for export in the major exporting countries. Therefore, it has been determined that the average carcass weight which will be used in calculating the live animal equivalents will be the average carcass weight of cows slaughtered in the U.S., which is currently a weight of 509 lbs. The Board shall review the available data from time to time and adjust the average carcass weight as appropriate.

The Economic Research Service has developed standard conversion factors for determining how much of a particular type of beef or beef product represents a carcass. These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the non-beef components of beef products. The number of pounds of a particular type of

product which constitutes a live animal equivalent is calculated by dividing the average carcass weight by the conversion factor. The assessment rate per pound is calculated by dividing the conversion factor by the average carcass weight and multiplying the result by the \$1.00 per head assessment rate. The assessment rates for imported beef and beef products have been recalculated in the final rule by applying the conversion factors to an average carcass weight of 509 pounds. In the case of one type of product, represented by the tariff schedule number 107.6300, it was found that an incorrect conversion factor was used in determining the assessment rate for that product in the proposed order. That error has been corrected in this final rule.

The same average carcass weight and conversion factors were applied to the data for imported cattle, beef and beef products published in the February 1986 issue of the Foreign Agriculture Circular "Dairy, Livestock, and Poultry." It was determined that importers will have five representatives on the initial Board.

In related comments, importer representatives suggested that one uniform rate be established for all imported beef and beef products for ease of calculating importer assessments. Although a single assessment rate for all types of beef and beef products would appear to be simpler, specific rates for each specified tariff schedule number provide a more precise method for assessing imported products with only a marginal increase in complexity. More importantly, the multiple rates are more equitable than a single rate system since a single assessment rate would be unfair to importers dealing primarily in certain products which should be assessed at a lower rate.

An importer association suggested that a provision should be adopted to refund any assessments collected on product returns (products which are refused entry into the U.S. after customs duties have been paid). This suggestion has merit, however, no specific provision should be necessary. Furthermore, this type of transaction normally should be treated as an adjustment of accounts rather than a refund. Section 1260.176, Adjustment of Accounts, has been modified slightly in this final rule to provide for payment when the matter cannot be handled by a credit to an account.

Since the Board has responsibility to certify qualified State beef councils, and these State beef councils play an integral role in the collection and compliance procedures, one commenter

suggested that the section referencing the Secretary's authority to collect assessments prior to the Board being established be deleted. This provision has been deleted in this final order. The collection of assessments in a national program of this proportion before the Board is in place could cause confusion and would place unnecessary, substantial burdens on persons responsible for paying the assessments and persons responsible for collecting them. Furthermore, no credit could be given for payments to State beef programs until the Board has certified them as being qualified. This would impose a burden on producers and would unnecessarily complicate the program.

One commenter suggested that refunds be granted at the point of collection. However, the Act provides only for a one-time refund to be paid after the initial referendum has been completed. Therefore, refunds cannot be made at the collection point.

A comment was received from the proponents of the order suggesting that the order should be modified to allow a qualified State beef council to apply the same time period for any application for a refund of the State assessment to the assessment required by this order. The proposed order provides that persons who pay assessments may request a refund within 60 days. The establishment of shorter or longer time periods in different States could be both confusing and unfair. Accordingly, the suggestion is not adopted in this final rule.

Section 1260.174(a) of the proposed order provides that requests for refund application forms must be signed by the producer or importer, or bear their properly witnessed mark. No convincing case has been made for restricting access to refund application forms. Accordingly, the provision has been modified in this final rule to allow persons to obtain a refund application form by written request to a qualified State beef council or to the Board.

A State Department of Agriculture suggested that the provision relating to the time frame for remittance of assessments to the Board by qualified State beef councils be modified. The position expressed in this comment was to the effect that because some State beef councils close their books on the last day of the month, coordination between the State beef councils and the Board would be furthered if the provisions for remittance of assessments were more flexible. This suggestion has merit. Accordingly, § 1260.181(b)(4) has been modified in this final rule to allow

the Board to establish due dates for such remittances.

Several comments were received from New England producer organizations suggesting that a New England regional marketing group be allowed to administer the collection of assessments in the Northeast Unit. The Act provides for only two types of entities to receive remittances of assessments, qualified State beef councils and the Board. Regional marketing groups do not meet the requirements for a qualified State beef council as set forth in the Act. Accordingly, the proposed modification is not adopted in this final rule.

Several comments expressed the view that qualified State beef council books and records should be audited to ensure that the monies received under the Act are spent in accordance with the Act and not for influencing governmental policy or action. This final order requires that qualified State beef councils submit an annual report prepared by a certified public accountant of all funds remitted to them pursuant to this subpart. Additionally, a qualified State beef council must certify to the Board that it will not use funds received pursuant to the Act to influence governmental policy or action. Accordingly, no additional provisions on the subject are necessary in this final order.

Two comments were received requesting that § 1260.203 be modified so that qualified State beef councils would be given access to confidential information available to the Board. The Act specifically prohibits disclosure of such information and provides penalties for any such disclosure.

One comment was received from a public interest group suggesting that the order provide that no funds collected by the Board or qualified State beef councils be used for false, deceptive, misleading, or unfair advertising. This suggestion has merit. The proposed order contains provisions which prohibit deceptive acts or practices, but they apply only to competing products. Accordingly, § 1260.169 (previously designated as § 1260.191) and § 1260.181 are modified in this final order to apply to all promotional and advertising plans and projects funded with assessments collected under the order. The commenter also suggested that the order contain specific provisions for the content of promotional materials. No convincing case has been made that any such restrictions are necessary. Accordingly, the suggestion is not adopted in this final rule.

It has been suggested that the provision requiring the Operating

Committee to prepare an annual report of its activities and an accounting of funds received and expended be deleted. The Department is responsible for the oversight of activities conducted under the Beef Promotion and Research Order. The required report will facilitate the evaluation and review process. Accordingly, the suggestion is not adopted in this final rule.

The proposed order contains procedures for filling vacancies on the Board and Operating Committee occasioned by the removal of members. The order should provide a procedure for removal. Accordingly, a new § 1260.213 has been added.

Several comments from producers expressed concern that there should be a referendum before assessments begin. Others suggested that a referendum should be held within 12 months or as soon as possible after the effective date of the final order. The Act provides that the initial referendum be held not later than 22 months after the issuance of this final order or at an earlier date recommended by the Board. Requiring an earlier referendum in the order itself at this time would be contrary to the intent of the Act. It was also suggested that periodic referenda should be mandatory. The Act provides that, after the initial referendum, the Secretary may conduct a referendum to determine whether a termination or suspension of the order is favored. This provision in the statute provides adequate authority for periodic referenda. Accordingly, it is unnecessary to include any further provision in the order.

It is hereby found and determined that it is impractical, unnecessary and contrary to the public interest to delay the effective date of the issuance of these rules for 30 days after their publication in the **Federal Register**. In order to carry out the statutory timetable for implementation of the order, it is necessary that the final order be effective on the date of publication in the **Federal Register**, except that the provisions in § 1260.172 (Assessments) shall be effective on October 1, 1986. This will allow the Board to evaluate petitions from appropriate entities for certification as Qualified State Beef Councils, and to issue any necessary implementing regulations before the collection of the assessments begins.

List of Subjects in 7 CFR 1260

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

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Title 7 of the CFR, Part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for Part 1260 is revised to read as follows:

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

2. Present Subpart A is redesignated Subpart B.

3. A new subpart A is added as follows:

Subpart A—Beef Promotion and Research Order

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- 1260.103 Board.
- 1260.104 Committee.
- 1260.105 Person.
- 1260.106 Collecting person.
- 1260.107 State.
- 1260.108 United States.
- 1260.109 Unit.
- 1260.110 Referendum.
- 1260.111 Fiscal year.
- 1260.112 Federation.
- 1260.113 Established national nonprofit industry-governed organizations.
- 1260.114 Eligible organizations.
- 1260.115 Qualified State beef council.
- 1260.116 Producer.
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- 1260.118 Cattle.
- 1260.119 Beef.
- 1260.120 Beef products.
- 1260.121 Imported beef or beef products.
- 1260.122 Promotion.
- 1260.123 Research.
- 1260.124 Consumer information.
- 1260.125 Industry information.
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Cattlemen's Beef Promotion and Research Board

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- 1260.142 Term of office.
- 1260.143 Nominations.
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1260.169 Promotion, research, consumer information and industry information.

Assessments

- 1260.172 Assessments.
- 1260.173 Refunds.
- 1260.174 Procedure for obtaining refund.
- 1260.175 Late-payment charge.
- 1260.176 Adjustment of accounts.
- 1260.181 Qualified State beef councils.

Reports, Books and Records

- 1260.201 Reports.
- 1260.202 Books and records.
- 1260.203 Confidential treatment.

Miscellaneous

- 1260.211 Proceedings after termination.
- 1260.212 Effect of termination or amendment.
- 1260.213 Removal.
- 1260.214 Personal liability.
- 1260.215 Patents, copyrights, inventions and publications.
- 1260.216 Amendment.
- 1260.217 Separability.

Subpart A—Beef Promotion and Research Order

Definitions

§ 1260.101 Department.

"Department" means the United States Department of Agriculture.

§ 1260.102 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in the Secretary's stead.

§ 1260.103 Board.

"Board" means the Cattlemen's Beef Promotion and Research Board established pursuant to the Act and this subpart.

§ 1260.104 Committee.

"Committee" means the Beef Promotion Operating Committee established pursuant to the Act and this subpart.

§ 1260.105 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1260.106 Collecting person.

"Collecting person" means the person making payment to a producer for cattle, or any other person who is responsible for collecting and remitting an assessment pursuant to the Act, the order and regulations prescribed by the Board and approved by the Secretary.

§ 1260.107 State.

"State" means each of the 50 States.

§ 1260.108 United States.

"United States" means the 50 States and the District of Columbia.

§ 1260.109 Unit.

"Unit" means each State, group of States or class designation which is represented on the Board.

§ 1260.110 Referendum.

"Referendum" means the referendum to be conducted by the Secretary pursuant to the Act whereby producers and importers shall be given the opportunity to vote to determine whether the continuance of this subpart is favored by a majority of producers and importers voting.

§ 1260.111 Fiscal year.

"Fiscal year" means the calendar year or such other annual period as the Board may determine.

§ 1260.112 Federation.

"Federation" means the Beef Industry Council of the National Live Stock and Meat Board, or any successor organization to the Beef Industry Council, which includes as its State affiliates the qualified State beef councils.

§ 1260.113 Established national nonprofit industry-governed organizations.

"Established national nonprofit industry-governed organizations" means organizations which:

(a) Are nonprofit organizations pursuant to sections 501(c) (3), (5) or (6) of the Internal Revenue Code (26 U.S.C. 501(c) (3), (5) and (6));

(b) Are governed by a board of directors representing the cattle or beef industry on a national basis; and

(c) Were active and ongoing before the enactment of the Act.

§ 1260.114 Eligible organization.

"Eligible organization" means any organization which has been certified by the Secretary pursuant to the Act and this Part as being eligible to submit nominations for membership on the Board.

§ 1260.115 Qualified State beef council.

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

§ 1260.116 Producer.

"Producer" 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 ten (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.

§ 1260.117 Importer.

"Importer" means any person who imports cattle, beef, or beef products from outside the United States.

§ 1260.118 Cattle.

"Cattle" means live domesticated bovine animals regardless of age.

§ 1260.119 Beef.

"Beef" means flesh of cattle.

§ 1260.120 Beef products.

"Beef products" means edible products produced in whole or in part from beef, exclusive of milk and products made therefrom.

§ 1260.121 Imported beef or beef products.

"Imported beef or beef products" means 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: 106.1020, 106.1040, 106.1060, 106.1080, 107.2000, 107.2520, 107.4000, 107.4500, 107.4820, 107.4840, 107.5220, 107.5240, 107.5500, 107.6100, 107.6200, 107.6300.

§ 1260.122 Promotion.

"Promotion" means any action, including paid advertising, to advance the image and desirability of beef and beef products with the express intent of improving the competitive position and stimulating sales of beef and beef products in the marketplace.

§ 1260.123 Research.

"Research" means studies relative to the effectiveness of market development and promotion efforts, studies relating to the nutritional value of beef and beef products, other related food science research, and new product development.

§ 1260.124 Consumer information.

"Consumer information" means nutritional data and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparing, and use of beef and beef products.

§ 1260.125 Industry information.

"Industry information" means information and programs that will lead to the development of new markets, marketing strategies, increased efficiency, and activities to enhance the image of the cattle industry.

§ 1260.126 Plans and projects.

"Plans and projects" means promotion, research, consumer information and industry information plans, studies or projects conducted pursuant to this subpart.

§ 1260.127 Marketing.

"Marketing" means the sale or other disposition in commerce of cattle, beef or beef products.

§ 1260.128 Act.

"Act" means the Beef Promotion and Research Act of 1985, Title XVI, Subtitle A of the Food Security Act of 1985, Pub. L. 99-198 and any amendments thereto.

§ 1260.129 Customs Service.

"Customs Service" means the United States Customs Service of the United States Department of the Treasury.

§ 1260.130 Part and subpart.

"Part" means the Beef Promotion and Research Order and all rules and regulations issued pursuant to the Act and the order, and the order itself shall be a "subpart" of such Part.

Cattlemen's Beef Promotion and Research Board**§ 1260.141 Establishment and membership.**

(a) There is hereby established a Cattlemen's Beef Promotion and Research Board. For purposes of the initial Board, the United States shall be divided into 41 geographical units and one unit representing importers and the number of Board members from each unit shall be as follows:

JANUARY 1, 1986

Unit	Cattle and calves (1,000 head)	Directors
1. Alabama	1,780	2
2. Arizona	1,050	1
3. Arkansas	1,750	2
4. California	5,000	5

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Unit	Cattle and calves (1,000 head)	Directors
5. Colorado	2,850	3
6. Florida	2,120	2
7. Georgia	1,700	2
8. Idaho	1,750	2
9. Illinois	2,470	2
10. Indiana	1,570	2
11. Iowa	4,950	5
12. Kansas	5,800	6
13. Kentucky	2,480	2
14. Louisiana	1,240	1
15. Michigan	1,410	1
16. Minnesota	3,400	3
17. Mississippi	1,430	1
18. Missouri	4,800	5
19. Montana	2,450	2
20. Nebraska	5,800	6
21. Nevada	610	1
22. New Mexico	1,390	1
23. New York	1,970	2
24. North Carolina	1,100	1
25. North Dakota	2,000	2
26. Ohio	1,840	2
27. Oklahoma	5,200	5
28. Oregon	1,575	2
29. Pennsylvania	1,960	2
30. South Carolina	635	1
31. South Dakota	3,600	4
32. Tennessee	2,500	3
33. Texas	13,600	14
34. Utah	790	1
35. Virginia	1,840	2
36. West Virginia	520	1
37. Wisconsin	4,280	4
38. Wyoming	1,325	1
39. Northwest		2
Washington	1,460	
Alaska	9	
Hawaii	209	
Total	1,678	
40. Northeast		1
Massachusetts	100	
Maine	135	
Vermont	350	
New Hampshire	69	
Total	654	
41. Mid-Atlantic		1
Maryland	370	
Delaware	27	
Rhode Island	7	
Connecticut	100	
New Jersey	97	
District of Columbia	0	
Total	601	
42. Importers	4,860	5

(b) The Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted pursuant to the Act and regulations of this Part. A producer may only be nominated to represent the unit in which that producer is a resident.

(c) In accordance with regulations approved by the Secretary, at least every three (3) years, and not more than every two (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 best reflect the

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geographic distribution of cattle production volume in the United States and the volume of imported cattle, beef or beef products into the United States.

(d) The Board may recommend to the Secretary a modification in the number of cattle per unit necessary for representation on the Board.

(e) The following formula will be used to determine the number of Board members who shall serve on the Board for each unit:

(1) Each geographic unit or State that includes a total cattle inventory equal to or greater than five hundred thousand (500,000) head of cattle shall be entitled to one representative on the Board;

(2) States which do not have total cattle inventories equal to or greater than five hundred thousand (500,000) head of cattle 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 of cattle and such unit(s) shall be entitled to at least one representative on the Board;

(3) Importers shall be represented by a single unit, with the number of Board members representing such unit based upon a conversion of the total volume of imported cattle, beef or beef products into live animal equivalencies;

(4) Each unit shall be entitled to representation by an additional Board member for each one million (1,000,000) head of cattle within the unit which exceeds the initial five hundred thousand (500,000) head of cattle within the unit qualifying such unit for representation.

(f) In determining the volume of cattle within the units, the Board and the Secretary shall utilize the information received by the Board pursuant to §§ 1260.201 and 1260.202 industry data and data published by the Department.

§ 1260.142 Term of office.

(a) The members of the Board shall serve for terms of three (3) years, except that the members appointed to the initial Board shall serve, proportionately, for terms of 1, 2, and 3 years. To the extent practicable, the terms of Board members from the same unit shall be staggered for the initial Board.

(b) Each member shall continue to serve until a successor is appointed by the Secretary.

(c) No member shall serve more than two consecutive 3-year terms in such capacity.

§ 1260.143 Nominations.

All nominations authorized under this section shall be made in the following manner:

(a) Nominations shall be obtained by the Secretary from eligible organizations. An eligible organization shall only submit nominations for positions on the Board representing units in which such eligible organization can establish that it is certified as an eligible organization to submit nominations for that unit. If the Secretary determines that a unit is not represented by an eligible organization, then the Secretary may solicit nominations from organizations, and producers residing in that unit.

(b) Nominations for representation of the importer unit may be submitted by—
(1) Organizations which represent importers of cattle, beef or beef products, as determined by the Secretary, or (2) Individual importers of cattle, beef or beef products. Individual importers submitting nominations for representation of the importer unit must establish to the satisfaction of the Secretary that the persons submitting the nominations are importers of cattle, beef or beef products.

(c) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. Nominations for subsequent Board members shall be submitted to the Secretary not less than sixty (60) days prior to the expiration of the terms of the members whose terms are expiring, in the manner as described in this section. In the case of vacancies due to reasons other than the expiration of a term of office, successor Board members shall be appointed pursuant to § 1260.146.

(d) Where there is more than one eligible organization representing producers in a unit, they may caucus and jointly nominate two qualified persons for each position representing that unit on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary two nominees for each appointment to be made to represent that unit.

§ 1260.144 Nominee's agreement to serve.

Any producer or importer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed; and

(b) Disclose any relationship with any beef promotion entity or with any organization that has or is being considered for a contractual relationship with the Board.

§ 1260.145 Appointment.

(a) From the nominations made pursuant to Section 1260.143, the Secretary shall appoint the members of the Board on the basis of representation provided for in Section 126.141.

(b) Producers or importers serving on the Federation Board of Directors shall not be eligible for appointment to serve on the Board for a concurrent term.

§ 1260.146 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall request that nominations for a successor for the vacancy be submitted by the eligible organization(s) representing producers or importers of the unit represented by the vacancy. If no eligible organization(s) represents producers or importers in such unit, then the Secretary shall determine the manner in which nominations for the vacancy are submitted.

§ 1260.147 Procedure.

(a) At a properly convened meeting of the Board, a majority of the members shall constitute a quorum, and any action of the Board at such a meeting shall require the concurring votes of at least a majority of those present at such meeting. The Board shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Board emergency action is considered necessary, and in lieu of a properly convened meeting, the Board may take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph, but any such action by telephone shall be confirmed promptly in writing. In the event that such action is taken, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force as though such action had been taken at a regular or special meeting of the Board.

§ 1260.148 Compensation and reimbursement.

The members of the Board shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

§ 1260.149 Powers of the Board.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive or initiate, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(d) To adopt such rules for the conduct of its business as it may deem advisable;

(e) To recommend to the Secretary amendments to this subpart; and

(f) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1260.172, in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

§ 1260.150 Duties of the Board.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson, a vice-chairperson and a treasurer and such other officers as may be necessary;

(b) To elect from its members an Executive Committee of no more than 11 and no less than 9 members, whose membership shall, to the extent practicable, reflect the geographic distribution of cattle numbers or their equivalent. The vice-chairperson of the Board shall serve as chairperson of the Executive Committee and the chairperson and the treasurer of the Board shall serve as members of the Executive Committee;

(c) To delegate to the Executive Committee the authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board;

(d) To elect from its members 10 representatives to the Beef Promotion Operating Committee which shall be composed of 10 members from the Board and 10 members elected by the Federation;

(e) To utilize the resources, personnel, and facilities of established national nonprofit industry-governed organizations;

(f) To review and, if approved, submit to the Secretary for approval, budgets prepared by the Beef Promotion Operating Committee on a fiscal period basis of the Committee's anticipated

expenses and disbursements in the administration of the Committee's responsibilities, including probable costs of promotion, research, and consumer information and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information and industry information programs contemplated therein;

(g) To prepare and submit to the Secretary for approval budgets on a fiscal period basis of the Board's overall anticipated expenses and disbursements, including the Committee's anticipated expenses and disbursements, in the administration of this subpart;

(h) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(i) To establish an interest bearing escrow account with a bank which is a member of the Federal Reserve System and to deposit into such account an amount equal to the product obtained by multiplying the total amount of funds received by the Board during the period prior to the referendum by the greater of:

(1) The average percentage of assessment refunds paid to producers under State beef promotion, research, and consumer information programs financed through producer assessments, as determined by the Board for the year of 1985; or

(2) 15 percent;

(j) To pay refunds to producers requesting refunds in a manner consistent with the following conditions:

(1) If continuation of this subpart is approved pursuant to the referendum, the Board shall continue to place the amounts required under paragraph (i) of this section in the escrow account until all requests for refunds are paid; or

(2) If the continuation of the order is not approved pursuant to the referendum and the amount deposited in the escrow account is less than the amount of refunds requested, the Board shall prorate the amount deposited in such account among all eligible persons who request a refund of assessments paid.

(k) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(l) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may

request, and submit a copy of each such audit to the Secretary;

(m) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary, or his representative may attend such meetings;

(n) To review applications submitted by State beef promotion organizations pursuant to § 1260.181 and to make determinations with regard to such applications;

(o) To submit to the Secretary such information pursuant to this subpart as may be requested; and

(p) To encourage the coordination of programs of promotion, research, consumer information and industry information designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products.

§ 1260.151 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve), as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with this subpart. Such expenses incurred by the Board shall not exceed 5 percent of the projected revenue of that fiscal period. Such expenses shall be paid from assessments collected pursuant to § 1260.172.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to § 1260.172, for administrative costs incurred by the Department to carry out its responsibilities pursuant to this subpart after the effective date of this subpart.

(c) The Board shall establish an interest bearing escrow account with a bank that is a member of the Federal Reserve System and shall deposit in such account an amount equal to the percentage determined by the Board to be held in reserve for the payment of refunds pursuant to § 1260.173.

(d) Expenditures for the maintenance and expansion of foreign markets for beef and beef products shall be limited to an amount equal to or less than the total amount of assessments paid pursuant to § 1260.172(a).

Beef Promotion Operating Committee

§ 1260.161 Establishment and membership.

(a) There is hereby established a Beef Promotion Operating Committee of 20 members. The Committee shall be composed of 10 Board members elected

by the Board and 10 producers elected by the Federation.

(b) Board representation on the Committee shall consist of the chairperson, vice-chairperson and treasurer of the Board, and seven representatives of the Board who will be duly elected by the Board to serve on the Committee. The seven representatives to the Committee elected by the Board shall, to the extent practical, reflect the geographic and unit distribution of cattle numbers, or the equivalent thereof.

(c) Federation representation on the Committee shall consist of the Federation chairperson, vice-chairperson, and eight duly elected producer representatives of the Federation Board of Directors who are members or ex officio members of the Board of Directors of a qualified State beef council. The eight representatives of the Federation elected to serve on the Committee shall, to the extent practical, reflect the geographic distribution of cattle numbers. The Federation shall submit to the Secretary the names of the representatives elected by the Federation to serve on the Committee and the manner in which such election was held and that such representatives are producers and are members or ex officio members of the Board of Directors of a qualified State beef council on the Federation Board of Directors. The prospective Federation representatives shall file with the Secretary a written agreement to serve on the Committee and to disclose any relationship with any beef promotion entity or with any organization that has or is being considered for a contractual relationship with the Board or the Committee. When the Secretary is satisfied that the above conditions are met, the Secretary shall certify such representatives as eligible to serve on the Committee.

§ 1260.162 Term of office.

(a) The members of the Committee shall serve for a term of 1 year.

(b) No member shall serve more than six consecutive terms.

§ 1260.163 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Committee, the Board or the Federation, depending upon which organization is represented by the vacancy, shall submit the name of a successor for the position in the manner utilized to elect representatives pursuant to § 1260.161 (b) and (c) above.

§ 1260.164 Procedure.

(a) Attendance of at least 15 members of the Committee shall constitute a quorum at a properly convened meeting of the Committee. Any action of the Committee shall require the concurring votes of at least two-thirds of the members present. The Committee shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Committee emergency action must be taken before a meeting can be called, the Committee may take action upon the concurring votes of no less than two-thirds of its members by mail, telephone, or telegraph. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Committee.

§ 1260.165 Compensation and reimbursement.

The members of the Committee shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

§ 1260.166 Officers of the Committee.

The following persons shall serve as officers of the Committee:

(a) The chairperson of the Board shall be chairperson of the Committee.

(b) The chairperson of the Federation shall be vice-chairperson of the Committee.

(c) The treasurer of the Board shall be treasurer of the Committee.

(d) The Committee shall elect or appoint such other officers as it may deem necessary.

§ 1260.167 Powers of the Committee.

The Committee shall have the following powers:

(a) To receive and evaluate, or on its own initiative, develop and budget for plans or projects to promote the use of beef and beef products as well as projects for research, consumer information and industry information and to make recommendations to the Secretary regarding such proposals;

(b) To select committees and subcommittees of Committee members, and to adopt such rules for the conduct of its business as it may deem advisable;

(c) To establish committees of persons other than Committee members to advise the Committee and pay the

necessary and reasonable expenses and fees of the members of such committees.

§ 1260.168 Duties of the Committee.

The Committee shall have the following duties:

(a) To meet and to organize;

(b) To contract with established national nonprofit industry-governed organizations to implement programs of promotion, research, consumer information and industry information;

(c) To disseminate information to Board members;

(d) To prepare and submit to the Board for approval budgets on a fiscal-period basis of its anticipated expenses and disbursements in the administration of its responsibilities, including probable costs of promotion, research, consumer information and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information and industry information programs contemplated therein;

(e) To develop and submit to the Secretary for approval promotion, research, consumer information and industry information plans or projects;

(f) With the approval of the Secretary to enter into contracts or agreements with established national nonprofit industry-governed organizations for the implementation and conduct of activities authorized under §§ 1260.167 and 1260.169 and for the payment of the cost of such activities with funds collected through assessments pursuant to § 1260.172. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Committee a budget or budgets which shall show the estimated cost to be incurred for such activity or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Committee or Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary, the Committee or the Board may require. The Secretary or agents of the Committee or the Board may audit periodically the records of the contracting party;

(g) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(h) To give the Secretary the same notice of meetings of the Committee and its subcommittees and advisory committees in order that the Secretary,

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or his representative, may attend such meetings;

(i) To submit to the Board and to the Secretary such information pursuant to this subpart as may be requested; and

(j) To encourage the coordination of programs of promotion, research, consumer information and industry information designed to strengthen the cattle industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products.

§ 1260.169 Promotion, research, consumer information and industry information.

The Committee shall receive and evaluate, or on its own initiative, develop and submit to the Secretary for approval any plans and projects for promotion, research, consumer information and industry information authorized by this subpart. Such plans and projects shall provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate plans or projects for promotion, research, consumer information and industry information, with respect to beef and beef products designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products;

(b) The establishment and conduct of research and studies with respect to the sale, distribution, marketing, and utilization of beef and beef products and the creation of new products thereof, to the end that marketing and utilization of beef and beef products may be encouraged, expanded, improved or made more acceptable in the United States and foreign markets;

(c) Each plan or project authorized under paragraph (a) and (b) of this section shall be periodically reviewed or evaluated by the Committee to ensure that each such plan or project contributes to an effective program of promotion, research, consumer information and industry information. If it is found by the Committee that any such plan or project does not further the purposes of the Act, then the Committee shall terminate such plan or project;

(d) In carrying out any plan or project of promotion or advertising implemented by the Committee, no reference to a brand or trade name of any beef product shall be made without the approval of the Board and the Secretary. No such plans or projects shall make use of any unfair or deceptive acts or practices, including unfair or deceptive acts or practices

with respect to the quality, value or use of any competing product; and

(e) No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this Part.

§ 1260.172 Assessments.

(a) *Domestic assessments.*—(1) Except as prescribed by regulations approved by the Secretary, each person making payment to a producer for cattle purchased from such producer shall be a collecting person and shall collect an assessment from the producer, and each producer shall pay such assessment to the collecting person, at the rate of one dollar (\$1) per head of cattle purchased and such collecting person shall remit the assessment to the Board or to a qualified State beef council pursuant to § 1260.172(a)(5).

(2) Any producer marketing cattle of that producer's own production in the form of beef or beef products to consumers, either directly or through retail or wholesale outlets, or for export purposes, shall remit to a qualified State beef council or to the Board an assessment on such cattle at the rate of one dollar (\$1) per head of cattle or the equivalent thereof.

(3) In determining the assessment due from each producer pursuant to § 1260.172(a), a producer who is contributing to a qualified State beef council(s) shall receive a credit from the Board for contributions to such Council, but not to exceed 50 cents per head of cattle assessed.

(4) In order for a producer described in § 1260.172(a) to receive the credit authorized in § 1260.172(a)(3), the qualified State beef council or the collecting person must establish to the satisfaction of the Board that the producer has contributed to a qualified State beef council.

(5) Each person responsible for the remittance of the assessment pursuant to § 1260.172 (a) (1) and (2) shall remit the assessment to the qualified State beef council in the State from which the cattle originated prior to sale, or if there is no qualified State beef council within such State, the assessment shall be remitted directly to the Board. However, the Board, with the approval of the Secretary, may authorize qualified State beef councils to propose modifications to the foregoing "State of origin" rule to ensure effective coordination of assessment collections between qualified State beef councils. Qualified State beef councils and the Board shall coordinate assessment collection procedures to ensure that producers

selling or marketing cattle in interstate commerce are required to pay only one assessment per individual sale of cattle. For the purpose of this subpart, "State of origin" rule means the State where the cattle were located at time of sale, or the State in which the cattle were located prior to sale if such cattle were transported interstate for the sole purpose of sale. Assessments shall be remitted not later than the 15th day of the month following the month in which the cattle were purchased or marketed.

(6) If a State law or regulation promulgated pursuant to State law requires the payment and collection of a mandatory, nonrefundable assessment of more fifty (50) cents per head on the sale and purchase of cattle, or the equivalent thereof for beef and beef products as described in § 1260.172 (a)(1) and (2) for use by a qualified State beef council to fund activities similar to those described in § 1260.169, and such State law or regulation authorizes the issuance of a credit of that amount of the assessment which exceeds fifty (50) cents to producers who waive any right to the refund of the assessment credited by the State due pursuant to this subpart, then any producer subject to such State law or regulation who pays only the amount due pursuant to such State law or regulation and this subpart, including any credits issued, shall thereby waive that producer's right to receipt from the Board of a refund of such assessment for that portion of such refund for which the producer received credit pursuant to such State law or regulation.

(b) *Importer assessments.* (1) Importers of cattle, beef, and beef products into the United States shall pay an assessment to the Board through the U.S. Customs Service, or in such other manner as may be established by regulations approved by the Secretary.

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

Live cattle	Assessment
100.0130	\$1.00/hd.
100.0140	\$1.00/hd.
100.0150	\$1.00/hd.
100.0180	\$1.00/hd.
100.4000	\$1.00/hd.
100.4300	\$1.00/hd.
100.4500	\$1.00/hd.
100.5000	\$1.00/hd.
100.5300	\$1.00/hd.
100.5500	\$1.00/hd.
Beef and beef products	Assessment
106.1020	.20 cents/lb.
106.1040	.20 cents/lb.
106.1060	.27 cents/lb.
106.1080	.77 cents/lb.

Beef and beef products ¹	Assessment
107.2000.....	25 cents/lb.
107.2520.....	25 cents/lb.
107.4000.....	35 cents/lb.
107.4500.....	35 cents/lb.
107.4820.....	35 cents/lb.
107.4840.....	35 cents/lb.
107.5220.....	37 cents/lb.
107.5240.....	37 cents/lb.
107.5500.....	27 cents/lb.
107.6100.....	28 cents/lb.
107.6200.....	27 cents/lb.
107.6300.....	38 cents/lb.

(3) The Board may prescribe by regulation, with the approval of the Secretary, an increase or decrease in the level of assessments for imported beef and beef products based upon revised determinations of live animal equivalencies.

(4) The assessments due upon imported cattle, beef and beef products shall be remitted to the Customs Service upon importation of the cattle, beef or beef products into the United States, or in such other manner as may be provided by regulations prescribed by the Board and approved by the Secretary.

(c) The collection of assessments pursuant to § 1260.172 (a) and (b) shall begin with respect to cattle purchased or cattle, beef, and beef products imported on and after the effective date of this section and shall continue until terminated by the Secretary.

(d) Money remitted pursuant to this subpart shall be in the form of a negotiable instrument made payable as appropriate to the qualified State beef council or the "Cattlemen's Beef Promotion and Research Board." Such remittances and the reports specified in § 1260.201 shall be mailed to the location designated by the Board.

§ 1260.173 Refunds.

Any producer of importer from whom an assessment is collected and remitted to the Board, or who pays an assessment directly to the Board, under authority of the Act and this subpart, and who is not in favor of supporting the promotion and research program as provided for in this subpart shall have the right to demand and receive from the Board a refund of such assessment, or a prorata share thereof, upon submission of proof satisfactory to the Board that the producer or importer paid the assessment for which refund is sought. Any such demand shall be made by such producer or importer in accordance with the provisions of this subpart and in a manner consistent with regulations prescribed by the Board and approved by the Secretary.

§ 1260.174 Procedure for obtaining refund.

Each producer or importer who pays an assessment pursuant to the Act and this subpart during the period prior to the referendum may obtain a refund of such assessment only by following the procedures prescribed in this section and any regulations prescribed by the Board and approved by the Secretary.

(a) *Application form.* Board-approved refund application forms may be obtained by written request to a qualified State beef council or the Board.

(b) *Submission of refund application to Board.* Any producer or importer requesting a refund shall mail an application on the prescribed form to a qualified State beef council or the Board within 60 days from the date the assessments were due from such producer or importer. The refund application shall show—

(1) The producer's or importer's name and address;

(2) Collecting person's name and address;

(3) Number of head of cattle, or its equivalent on which a refund is requested;

(4) Total amount of refund requested;

(5) Date or inclusive dates on which assessments were paid;

(6) Certification that the producer or importer did not collect the assessment from another producer or importer; and

(7) The producer's or importer's signature or properly witnessed mark.

(c) *Proof of payment of assessment.* The invoice or accounting given to the producer or importer by the collecting person or a copy thereof, or such other evidence deemed satisfactory by the Board shall accompany the producer's or the importer's refund application.

(d) *Payment of refunds.* The Board shall pay refund requests or a prorata share thereof within 90 days of the date the results of the referendum are released by the Secretary. Refunds shall be paid in a manner consistent with § 1260.150(j).

§ 1260.175 Late-payment charge.

Any unpaid assessments due to the Board pursuant to § 1260.172 shall be increased 2.0 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this section, any assessment that was determined at a date later than prescribed by this subpart because of a

person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the qualified State beef council or Board, whichever is earlier.

§ 1260.176 Adjustment of accounts.

Whenever the Board or the Department determines that money is due the Board or that money is due any person from the Board, such person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments as provided in § 1260.172. Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months except that the Board shall make prompt payment when an overpayment cannot be adjusted by a credit.

§ 1260.181 Qualified State beef councils.

(a) Any beef promotion entity that is authorized by State statute or is organized and operating within a State, that receives assessments or contributions from producers and conducts beef promotion, research, consumer information and/or industry information programs may apply for certification of qualification so that producers may receive credit pursuant to § 1260.172(a)(3) for contributions to such organization. The Board shall review such applications for certification and shall make a determination as to certification of such applicant.

(b) In order for the State beef council to be certified by the Board as a qualified State beef council, the council must:

(1) Conduct activities as defined in Section 1260.169 that are intended to strengthen the beef industry's position in the marketplace;

(2) Submit to the Board a report describing the manner in which assessments are collected and the procedure utilized to ensure that assessments due are paid;

(3) Certify to the Board that such council will collect assessments paid on cattle originating from the State or unit within which the council operates and shall establish procedures for ensuring compliance with this subpart with regard to the payment of such assessments;

(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 last day of 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.

(5) Councils which are authorized or required to pay refunds to producers must certify to the Board that any requests from producers for refunds from the council for contributions to such council 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 to the council pursuant to § 1260.172(a)(3);

(6) Certify to the Board that the council will furnish the Board with an annual report by a certified public accountant of all funds remitted to such council pursuant to this subpart and any other reports and information the Board or Secretary may request; and

(7) Not use council funds collected pursuant to this subpart for the purpose of influencing governmental policy or action, or to fund plans or projects which make use of any unfair or deceptive acts or practices including unfair or deceptive acts or practices with respect to the quality, value or use of any competing product.

Reports, Books and Records

§ 1260.201 Reports.

Each importer, person marketing cattle, beef or beef products of that person's own production directly to consumers, and each collecting person making payment to producers and responsible for the collection of the assessment under § 1260.172 shall report to the Board periodically information required by regulations prescribed by the Board and approved by the Secretary. Such information may include but is not limited to the following:

(a) The number of cattle purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, and the dates of such transaction;

(b) The number of cattle imported; or the equivalent thereof of beef or beef products;

(c) The amount of assessment remitted;

(d) The basis, if necessary, to show why the remittance is less than the number of head of cattle multiplied by one dollar; and,

(e) The date any assessment was paid.

§ 1260.202 Books and records.

Each person subject to this subject shall maintain and make available for inspection by the Secretary the records required by regulations prescribed by the Board and approved by the Secretary that are necessary to carry out the provisions of this subpart, including records necessary to verify any required reports. Such records shall be maintained for the period of time prescribed by the regulations issued hereunder.

§ 1260.203 Confidential treatment.

All information obtained from such books, records or reports required under the Act and this subpart shall be kept confidential by all persons, including employees and agents and former employees and agents of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and employees and all former officers and employees of contracting organizations having access to such information, and shall not be available to Board members or any other producers or importers. Only those persons having a specific need for such information in order to effectively administer the provisions of this subpart shall have access to this information. In addition, only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit: (a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and (b) the publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subject, together with a statement of the particular provisions of the subpart violated by such person.

Miscellaneous

§ 1260.211 Proceedings after termination.

(a) Upon the termination of this subpart the Board shall recommend not more than 11 of its members to the Secretary to serve as trustees for the purchase of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in

the possession of or under the control of the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to §§ 1260.150 and 1260.168.

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information or industry information plans or projects authorized pursuant to this subpart.

§ 1260.212 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or,

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

§ 1260.213 Removal.

If any person appointed under this Part fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Board or Committee may recommend to

the Secretary that that person be removed from office. If the Secretary finds that the recommendation demonstrates adequate cause, the Secretary shall remove the person from office. A person appointed or certified under this Part or any employee of the Board or Committee may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1260.214 Personal liability.

No member, employee or agent of the Board or the Committee, including employees or agents of a qualified State beef council acting on behalf of the Board, shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes or other acts of either commission or omission, or such member or employee, except for acts of dishonesty or willful misconduct.

§ 1260.215 Patents, copyrights, inventions and publications.

(a) Any patents, copyrights, inventions or publications developed through the use of funds collected by the Board under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, ensure to the benefit of the Board. Upon termination of this subpart, § 1260.211 shall apply to determine disposition of all such property.

(b) Should patents, copyrights, inventions or publications be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions or publications shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright,

invention or publication in a manner consistent with paragraph (a) of this section.

§ 1260.216 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board, or by any organization or association certified pursuant to the Act and this Part, or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1260.217 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof of other persons or circumstances shall not be affected thereby.

Done at Washington, DC: July 16, 1986.

James C. Handley,

Administrator

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