

to be established by this rule (73 percent free and 27 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2008–2009 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

As mentioned earlier, USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 12, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and

recordkeeping requirements under the tart cherry marketing order have been previously approved by OMB and assigned OMB Number 0581–0177.

Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule would need to be in place as soon as possible since handlers are already shipping tart cherries from the 2008–2009 crop. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.256 is added to read as follows:

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

§ 930.256 Final free and restricted percentages for the 2008–2009 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2008, which shall be free and restricted, respectively, are designated as follows: Free percentage, 73 percent and restricted percentage, 27 percent.

Dated: November 26, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–28769 Filed 12–4–08; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[Docket No. AMS–LS–08–0074]

Soybean Promotion, Research, and Information Program: Amend Procedures To Request a Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would amend the regulations that provide for procedures to request a referendum under the Soybean Promotion, Research, and Consumer Information Program, commonly known as the soybean checkoff program. The number of soybean producers referred to in the regulations would change from 663,880 to 589,182, based on information provided by the Department of Agriculture (USDA), Farm Service Agency (FSA). This change is necessary to establish the number of soybean producers who are eligible to participate in the 2009 Request for Referendum. Additionally, this rule would amend the regulations pursuant to administrative changes to Web site addresses and office locations made for the USDA's Agricultural Marketing Service (AMS). **DATES:** Comments must be received by December 22, 2008.

ADDRESSES: Comments may be posted online at <http://www.regulations.gov>, or sent to Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; or via Fax to (202) 720–1125. Comments will be made available for public inspection at the above address during regular business hours or via the Internet at <http://www.regulations.gov>. Comments received will be posed

without change, including any personal information provided. All comments should reference the docket number, Docket No. AMS-LS-08-0074; the date of submission; and the page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628-S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250-0251; Telephone 202/720-1115; Fax 202/720-1125; or e-mail to Kenneth.Payne@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposal is not intended to have a retroactive effect. The proposed rule would not preempt any other Federal or State laws, regulations, or policies.

The Soybean Promotion, Research, and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Act, a person subject to the Soybean Promotion and Research Order (Order) may file a petition with USDA stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with the law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review USDA's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

Further, section 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized under the laws of the United States or any State. One exception in the Act concerns assessments collected by Qualified State Soybean Boards (QSSBs). The exception

provides that to ensure adequate funding of the operations of QSSBs under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation of a QSSB or State soybean assessment.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), USDA is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

For the purpose of the Request for Referendum, the Secretary would use the most recent number of soybean producers identified by USDA's FSA. The latest number of soybean producers identified by FSA is 589,182 and was obtained using information from 2006 and 2007 acreage reports. The data were sorted in such a manner as to include all producers that were engaged in the production of soybeans in at least one of the 2 years and exclude counting a producer more than once if that producer engaged in production during both years. Therefore, the number of soybean producers who would be eligible to participate in the Request for Referendum would be 589,182. The majority of producers subject to the Order are small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. SBA defines small agricultural producers as those having annual receipts of less than \$750,000.

Further, the information collection requirements are minimal. Requesting form LS-51-1 to participate in a Request for Referendum may be done by mail, in-person, by facsimile, or via the Internet and would not impose a significant economic burden on participants. Finally, this action would amend the regulations pursuant to administrative changes to web site addresses and office locations for the AMS. Accordingly, the Administrator of AMS has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the reporting and

recordkeeping requirements included in 7 CFR part 1220 were previously approved by OMB and were assigned control number 0581-0093.

Background

The Act (7 U.S.C. 6301-6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of 1 percent of the net market price of soybeans sold by producers. The final rule establishing a Soybean Promotion, Research, and Consumer Information program was published in the July 9, 1991, issue of the **Federal Register** (56 FR 31043) and assessments began on September 1, 1991.

The Act required that an initial referendum be conducted no earlier than 18 months and not later than 36 months after the issuance of the Order to determine whether the Order should be continued. The initial referendum was conducted on February 9, 1994. On April 1, 1994, the Secretary announced that of the 85,606 valid ballots cast, 46,060 (53.8 percent) were in favor of continuing the Order and the remaining 39,546 votes (46.2 percent) were against continuing the Order. The Act required approval by a simple majority for the Order to continue.

The Act also required that within 18 months after the Secretary announced the results of the initial referendum, the Secretary would conduct a poll among producers to determine if producers favored a referendum on the continuance of the payment of refunds under the Order.

A July 25, 1995, nationwide poll of soybean producers did not generate sufficient support for a refund referendum to be held. A refund referendum would have been held if at least 20 percent (not in excess of one-fifth of which may be producers in any one State) of the 381,000 producers (76,200) nationwide requested it. Only 48,782 soybean producers participated in the poll. Consequently, refunds were discontinued on October 1, 1995.

The Act also specifies that the Secretary shall, 5 years after the conduct of the initial referendum and every 5 years thereafter, provide soybean producers an opportunity to request a referendum on the Order. Additionally, the Act specifies that these subsequent polls require that at least 10 percent (not in excess of one-fifth in any one State) of all producers must request a

referendum in order to trigger the conduct of a referendum. If a referendum is requested, it will be held within 1 year of that determination.

On October 1, 1999, through November 16, 1999, a nationwide Request for Referendum was conducted to determine if there was sufficient interest among soybean producers to vote on whether to continue the soybean checkoff program. Ten percent of the 600,813 soybean producers nationwide (not in excess of one-fifth of which may be producers in any one State) needed to participate in the Request for Referendum to trigger a referendum. Only 17,970 eligible soybean producers completed valid requests.

Five years later, another Request for Referendum was conducted May 1, 2004, through May 28, 2004. As in the prior Request for Referendum, the purpose was to determine if there was sufficient interest among soybean producers to vote on whether to continue the soybean checkoff Program. To be eligible to participate in the Request for Referendum, producers or the producer entity that they are authorized to represent had to certify and provide supporting documentation showing that they or the producer entity they represent paid an assessment sometime during the representative period between January 1, 2002, and December 31, 2003. Of the total 663,880 soybean producers eligible to participate, 3,206 valid Requests for Referendum were completed. This number did not meet the requisite number of 66,388; therefore, a referendum was not conducted.

In accordance with the Act, another Request for Referendum will be conducted in 2009. In this proposed rule, data provided by USDA's FSA would be used to amend the number of soybean producers in preparation for this upcoming Request for Referendum. Presently, § 1220.616 of the Order states that the number of soybean producers in the United States is 663,880. The latest number of soybean producers identified by FSA is 589,182 soybean producers for crop years 2006 and 2007, using information based on acreage reports compiled on a daily basis. The data were sorted in such a manner as to include all producers that were engaged in the production of soybeans in at least one of the 2 years and exclude counting a producer more than once if that producer engaged in production during both years. Using the last two crop years for which complete data is available ensures that all eligible producers are counted, as some producers use soybeans in rotation with other crops and do not plant soybeans every year or

the market for some producers in a particular crop year may not have been conducive to growing soybeans. This methodology is consistent with that used during the last amendment to § 1220.616 in 2004.

In addition to the changes proposed relating to the number of eligible soybean producers, AMS also intends to amend §§ 1220.622 and 1220.628 to update Web site addresses and office locations as a result of internal changes within the agency.

A 15-day comment period is provided for interested persons to comment on the proposed changes to section 1220.616. This comment period is deemed appropriate because the Act provides that the Secretary, every 5 years after the initial continuation referendum, will give soybean producers the opportunity to request additional referenda on the Order. A 15-day comment period will allow sufficient time to publish a final rule to amend § 1220.616 before the upcoming Request for Referendum. As such, the number of soybean producers eligible to participate in a Request for Referendum will be established, and a Request for Referendum can be conducted as early in 2009 as practicable.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Reporting and recordkeeping requirements, Soybeans and soybean products.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1220 be amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311 and 7 U.S.C. 7401.

Subpart F—Procedures To Request a Referendum

2. In § 1220.616, paragraph (d) is revised to read as follows:

§ 1220.616 General.

(d) For purposes of paragraphs (b) and (c) of this section, the number of soybean producers in the United States is determined to be 589,182.

§ 1220.622 [Amended]

3. In § 1220.622, paragraph (b) the Web site “www.ams.usda.gov/lsg/mpb/rp-soy.htm” is removed and a new Web

site “www.ams.usda.gov/lsmarketingprograms” is added in its place.

4. In § 1220.628, paragraph (a) is revised to read as follows:

§ 1220.628 Results of the request for referendum.

(a) The Administrator, FSA, shall submit to the Administrator, AMS, the reports from all State FSA offices. The Administrator, AMS shall tabulate the results of the Request for Referendum. USDA will issue an official press release announcing the results of the Request for Referendum and publish the same results in the **Federal Register**. In addition, USDA will post the official results at the following Web site: <http://www.ams.usda.gov/lsmarketingprograms>. Subsequently, State reports and related papers shall be available for public inspection upon request during normal business hours in the Marketing Programs Branch office, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC.

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Dated: November 26, 2008.

James E. Link,
Administrator.

[FR Doc. E8–28674 Filed 12–4–08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1275; Directorate Identifier 2007–NM–167–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD would require repetitive detailed and high frequency eddy current inspections to detect cracks of the backup intercostals and the upper sill of the forward airstair doorway, and applicable corrective actions. This proposed AD would also provide for an optional terminating