

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1220

[No. LS-98-001]

#### Soybean Promotion and Research Program: Request for Referendum

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This action would change the number of eligible soybean producers estimated in the proposed "Request for Referendum" on the Soybean Promotion and Research Order (Order) as published in the September 4, 1998, **Federal Register** and would amend the regulations accordingly. The estimated number of eligible soybean producers would change from 381,000 soybean producers to 600,813 soybean producers based on the results of a statistical survey.

**DATES:** Written comments must be received by May 17, 1999.

**ADDRESSES:** Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Program, Agricultural Marketing Service (AMS), USDA; STOP-0251; 1400 Independence Avenue, SW.; Washington, D.C. 20250-0251. Comments will be available for public inspection during regular business hours in Room 2627 South Agriculture Building; 14th and Independence Avenue, SW., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720-1115.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Impact Analysis

*Executive Order 12866 and 12988 and the Regulatory Flexibility Act and the Paperwork Reduction Act*

The Department of Agriculture (Department) is issuing this rule in

conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Soybean Promotion, Research, and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Order may file with the Secretary a petition 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 request 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 the Secretary will rule on the petition. The statute provides that the district court of the United States in any district in which the petitioner resides or carries on business has jurisdiction to review the Secretary's decision if a complaint for that purpose is filed not later than 20 days after the date of the entry of the Secretary's decision.

Further, § 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 and operated under the laws of the United States or any State. One exception in the Act concerns assessments collected by the 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 referendums conducted during specified periods by a State relating to the continuation or termination of a QSSB or State soybean assessment.

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 United States Code (U.S.C.) 601 *et seq.*), the Administrator of AMS has considered the economic effect of this proposed

action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small business entities.

According to the statistical survey initiated by the Department, there are 600,813 soybean producers who would be eligible to participate in the "Request for Referendum." The majority of producers subject to the Order are small businesses under the criteria established by the Small Business Administration.

Further, the requirements set forth in the proposed rule are substantially similar to the rules that established the eligibility and participation requirements for a July 26, 1995, soybean producer poll published as a final rule on March 22, 1995 (60 FR 15027), in the **Federal Register**.

The procedures to request a referendum would not impose a substantial burden or have a significant impact on persons subject to the Order. Further, participation is not mandatory. Not all persons subject to the Order are expected to participate. The Department would determine producer eligibility.

In compliance with the Office of Management and Budget (OMB) regulations [5 CFR Part 1320] which implements the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], the information collection requirements contained in this proposed rule have been previously approved by OMB and were assigned OMB control number 0581-0093. The information collection requirements in the proposed rule include the following:

(1) Any eligible person who requests a referendum must legibly print his/her name, or if applicable, the producer entity represented, address, telephone number, and county on the "Request for a Soybean Referendum" form (Form LS-51-1). Each person must read the certification statement on the form and sign it certifying that he/she or the producer entity represented meets the eligibility requirements. Form LS-51-1 shall be obtained in person, by mail, telephone, or facsimile from the county Farm Service Agency (FSA) office where FSA maintains and processes the producer's administrative farm records or at the county FSA office serving the county where the producer owns or rents land. Form LS-51-1 may be returned by mail, by facsimile, or in person to the same county FSA office

where the form was obtained. A producer or producer entity representative who obtains Form LS-51-1 in person during the "Request for Referendum" period from the appropriate county FSA office may complete Form LS-51-1 at that time. The estimated average time burden for completing the procedure is 5 minutes per person.

(2) Using information from each returned Form LS-51-1, county FSA personnel shall enter the producer's name, and if applicable, producer entity representative, the date received (and the postmarked date for mailed requests), and the method the form was received on the "List of Soybean Producers Requesting a Referendum" (Form LS-51-2). This information may be used for the purpose of challenging the eligibility of producers. Many county FSA offices will use more than one Form LS-51-2 depending on the number of producers requesting a referendum. Because only county FSA office personnel would be required to complete Form LS-51-2, the time required to complete this form is not included in the estimated average reporting burden for a producer.

#### 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 one percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991, and the collection of assessments began September 1, 1991.

The Act required that an initial referendum be conducted no earlier than 18 months and no 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

avored 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 based on the total number of producers in the United States established at that time. 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.

For all such referendums, if the Secretary determines that at least 10 percent of U.S. producers engaged in growing soybeans (not in excess of one-fifth of which may be producers in any one State) support the conduct of a referendum, the Secretary must conduct a referendum within 1 year of that determination. If these requirements are not met, a referendum would not be conducted.

On September 4, 1998, AMS published a proposed "Request for Referendum" rule in the **Federal Register** (63 FR 47200). The proposed rule set forth procedures to be followed in conducting the "Request for Referendum." The proposed rule included provisions concerning definitions, supervision of the process for requesting a referendum, eligibility, certification and request procedures, counting and reporting results, and disposition of the forms and records. The proposed rule also provided that the "Request for Referendum," be conducted at the county FSA offices and that FSA assist AMS by determining eligibility, counting, and reporting results. Finally, the proposed rule provided that the Secretary would use the latest official number of U.S. soybean farms as reported by the Department's National Agricultural Statistics Service (NASS) as representing the total number of U.S. soybean producers. At the time the proposed rule was published, the latest official data available and reported by NASS was based on the 1992 Census of Agriculture (1992 Census) which showed that 381,000 farms produced soybeans.

Comments on the proposed rule were due in the Department by October 5, 1998. The Department received six

comments from State and national soybean organizations concerning the Department's estimated number of soybean producers eligible to participate in the "Request for Referendum." Four comments were filed on time and two comments were filed after the comment period ended. The late comments generally expressed the same views as the timely comments. In addition, six other comments were received addressing other matters in the September 4, 1998, proposed rule will be discussed in a final rule.

The four comments timely received expressed the belief that the 381,000 soybean farms reported by the 1992 Census and proposed by the Department as the total number of soybean producers grossly understates the true number of soybean producers. Furthermore, the commenters believed that the 1992 Census data (1) was outdated, (2) did not provide a proper basis for determining the number of soybean producers, and (3) did not reflect the current number of producers which they believed had increased since the enactment of the 1996 Farm Bill. Two commenters recommended that AMS utilize the results of the United Soybean Board's (Board) recent survey of soybean producers, which was based on FSA's data, or use other relevant information to determine the number of soybean farmers eligible to request a referendum. The Board's survey suggested that there could be as many as 649,000 soybean producers in the United States which is significantly more soybean producers than reflected in the 1992 Census data. Further, the most recent Census data for 1997 as reported by NASS indicated that there are 354,692 soybean farms. Accordingly, in order to better address this issue, AMS contracted with an independent surveyor to conduct a survey of soybean producers.

AMS obtained a list from FSA of approximately 970,000 producers who produced soybeans, or who produced forage or hay which may have included soybeans during crop years 1995-97. AMS then developed a survey from this information designed to determine the number of producers which meet the definition of a soybean producer contained in the Act.

To achieve 95 percent confidence in the survey results with a 2 percent margin of error, the surveyor would obtain over 2,400 "yes" or "no" responses from those interviewed regarding their soybean producer status. Those interviewed were asked to respond only after listening to the definition of soybean producer provided under § 1967 of the Act as read by the

caller. The definition of producer is "any person engaged in the growing of soybeans in the United States who owns, or who shares the ownership and risk of loss of, such soybeans."

On March 5, 1999, AMS received the results of the soybean producer survey. AMS, also, reviewed the methods used for conducting the soybean producer survey to ensure that the procedures outlined by AMS were followed. The results indicated that approximately 62 percent of those surveyed were soybean producers as defined in the Act. Thus, based on the results, for the purposes of the "Request for Referendum," AMS proposes to use 600,813 as the total number of U.S. soybean producers. This number would serve as the basis for determining whether a soybean referendum would be conducted. A soybean referendum would be conducted if requested by 10 percent of the total number of U.S. soybean producers (not in excess of one-fifth of which may be producers in any one State) engaged in the growing of soybeans.

Since the basis for establishing the total number of producers would no longer be NASS data, § 1220.30(d) of the proposed rule would be amended by deleting the phrase "\* \* \* the latest official numbers of U.S. soybean farms as reported by the Department's National Agricultural Statistics Service as the total number of producers." and inserting the phrase "\* \* \* the number of soybean producers in the United States is determined to be 600,813."

A 30-day comment period is provided for interested persons to comment on this amended proposed rule. This comment period is deemed appropriate because the Act provides that the Secretary, 5 years after the conduct of the initial referendum held in 1994, will give soybean producers the opportunity to request an additional referendum on the Order. A 30-day comment period will assist in timely implementation of this rule consistent with the provisions of the Act.

#### 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 would continue to read as follows:

**Authority:** 7 U.S.C. 6301–6311.

#### Subpart F—Procedures to Request a Referendum Procedures

2. In § 1220.30, as proposed at 63 FR 47202, September 4, 1998, paragraph (d) is further proposed to be revised to read as follows:

##### § 1220.30 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 600,813.

Dated: April 13, 1999.

**Barry L. Carpenter,**

*Deputy Administrator, Livestock and Seed Program.*

[FR Doc. 99-9658 Filed 4-14-99; 11:18 am]

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#### NUCLEAR REGULATORY COMMISSION

#### 10 CFR Parts 30, 40, and 70

[Docket No. PRM-30-61]

#### Nuclear Energy Institute; Denial of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM-30-61) submitted by the Nuclear Energy Institute (NEI). The petitioner requested that the NRC amend its regulations governing timeliness of decommissioning of sites and separate buildings or outdoor areas. Because the petitioner has provided no new significant information that would call into question the basis for the requirements in these regulations, the NRC denies the petition. To achieve the intent of the petition, NRC will develop guidance to clarify specific criteria to review licensee requests for alternate schedules for initiation of decommissioning of inactive contaminated sites.

**ADDRESSES:** Copies of the PRM, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document

Room, 2120 L Street NW, (lower level), Washington, DC 20555-0001.

#### FOR FURTHER INFORMATION CONTACT:

Anthony DiPalo, telephone (301) 415-6191, e-mail, [ajd@nrc.gov](mailto:ajd@nrc.gov), of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

#### SUPPLEMENTARY INFORMATION:

#### The Petition

On August 21, 1996 (61 FR 43193), the NRC published a notice of receipt of a PRM filed by the NEI. The petitioner requested that NRC amend its regulations in 10 CFR Parts 30, 40, and 70 to provide for an alternative which could result in the delay of decommissioning of a site, separate building, or outdoor area where principal activities have not been conducted for at least 24 months, and the site, separate building, or outdoor area is unsuitable for unrestricted release in accordance with NRC requirements. Specifically, the petitioner requested that inactive facilities be allowed to go on "standby" status until economic conditions in its industry improved. The petitioner believes the requested changes are necessary because the rule, as written, has the potential to . . . "eliminate important components from the nuclear industry infrastructure." The petitioner also asserted as a basis for its petition that NRC's regulations were not intended to give it jurisdiction over the commercial aspects of a licensee's activities and, therefore, NRC regulations should not impose restrictions on facilities or sites that have the potential to impact commercial decisions. Further, the petitioner believes that NRC's current regulation is not necessary given the cohesiveness and maturity of the industry today.

#### Public Comments on the Petition

The notice of receipt of the PRM invited interested persons to submit comments. The comment period closed on November 4, 1996. NRC received comment letters from the following five organizations: (1) Kennecott Energy; (2) Siemens Power Corporation; (3) Wyoming Mining Association; (4) National Mining Association; and (5) Babcock & Wilcox, Naval Nuclear Fuel Division. All five commenters supported the PRM. They supported amending the Timeliness Rule to permit facilities to postpone decommissioning and enter a "standby" mode in which facilities would be monitored and maintained for a predetermined time period, pending future operation.