

Section 610 Review of the Soybean Promotion, Research, and Information Program Under the Soybean Research and Promotion Order (7 CFR Part 228)

BACKGROUND

On February 18, 1999, the Department of Agriculture (USDA) published in the *Federal Register* a plan to review all regulations that warrant periodic review. Updated plans were published in the *Federal Register* on January 4, 2002, August 14, 2003, and March 24, 2006. According to the plans, reviews are being conducted over 10 years, starting in 1999, under section 610 of the Regulatory Flexibility Act (RFA). The purpose of the RFA is to apply regulatory actions according to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Most of the entities that operate under national research and promotion programs are small entities and fall under the definition of small businesses. The Small Business Administration (13 CFR 121.201) defines the majority of small agricultural businesses as those entities having annual receipts that are less than \$750,000. Since many Agricultural Marketing Service (AMS) regulations impact small entities, AMS, as a matter of policy, is reviewing certain regulations, which, although may not meet the threshold requirement under section 610 of the RFA, warrant review.

Until 1996, industry-specific legislation had to be passed by Congress before a research and promotion program could be established. However, under the Commodity, Promotion, Research and Information Act of 1996, industry groups may submit a proposal to AMS requesting that a research and promotion program be implemented. Once implemented, an industry board is appointed by the Secretary of Agriculture (Secretary) based on industry nominations. Research and promotion boards are generally a combination of producers, handlers, and/or processors. In some cases, importer and public members also hold positions on the boards. Assessments are collected from designated industry segments.

National research and promotion programs are designed to strengthen the position of a commodity in the marketplace, maintain and expand existing domestic and foreign markets, and develop new uses and markets for specified agricultural commodities. These programs require approval through referendum of those who would be covered by the program. Some programs have periodic surveys to determine if persons subject to each program desire a referendum. The Commodity Promotion, Research, and Information Act of 1996 requires referendums be conducted every seven years.

INTRODUCTION

The Soybean Promotion, Research, and Consumer Information Act (Act), which established the Soybean Promotion, Research, and Consumer Information Program, known as the Soybean Checkoff Program (Program), was reviewed to determine whether it should continue without change, or whether it should be amended, rescinded, or terminated to minimize the impact on small businesses. This review is being conducted in accordance with section 610 of the RFA.

AMS considers the following factors in its review of the Program:

1. The nature of complaints or comments from the public concerning the Act and the Soybean Research and Promotion Order (Order);
2. The complexity of the Order;
3. The extent to which the rules of the Order overlap, duplicate, or conflict with other Federal rules and, to the extent feasible, with state and local regulations;
4. Changes to the Order since previous evaluation due to technological, economic, or other factors; and
5. The continued need for the Order.

REVIEW OF SOYBEAN PROMOTION, RESEARCH, AND INFORMATION PROGRAM

The Act [7 U.S.C. 6301-6311] was passed as part of the Food Agricultural Conservation and Trade Act of 1990 (commonly known as the 1990 Farm Bill) and authorized the establishment of a national soybean promotion, research, and consumer information program. The Program became effective July 9, 1991, when the Order, which was authorized by the Act, was published in the *Federal Register*. Assessments began September 1, 1991.

The Program is funded by a mandatory assessment of one-half of one percent of the net market price of soybeans. All producers marketing soybeans must pay the assessment, which is used to fund promotional and informational campaigns and to conduct research with the objective of expanding and improving the use of soybeans and soybean products. The Act requires a producer poll to be conducted every five years to determine whether producers favor conducting a continuance referendum.

The Program is administered by the United Soybean Board (Board), which has 64 producer members representing 28 States and 2 combined geographical units. The Board develops plans, projects, budgets, and contracts to carry out a coordinated program of promotion, research, consumer information, and industry information. The Board's office is located in Chesterfield, Missouri. The initial Board was appointed by the Secretary and comprised of soybean producers nominated by eligible organizations for one, two, or three-year terms. Following the initial Board, members are nominated by eligible organizations and appointed by the Secretary for 3-year terms. Each year, approximately one-third of all Board positions are eligible for reappointment. At the end of each 3-year period, the Board reviews geographic distribution of soybean production volume throughout the United States and may recommend a modification to the Board by geographical unit to reflect changes in production levels. These adjustments are required by the Order.

The Board is comprised of several advisory committees, which set forth program activities that align with the industry's strategic plan, and an Executive Committee, which is made up of 10 members elected by the Board, including its 3 officers and 7 members elected at large. The immediate past chair of the Board also serves on the committee as an ex-officio member for

advisory purposes. The Executive Committee operates under the direction of the full Board. It is responsible for carrying out Board policies, conducting business, and making the decisions necessary to administer the terms and provisions of the Act and Order between meetings of the full Board. The Board is also responsible for recommending any changes to the Program to USDA and, if necessary, may request rulemaking to implement the actions. USDA must approve recommendations by the Board before they can be implemented. The full Board meets three times each year.

On December 2, 2005, a notice of review was published in the *Federal Register*. AMS received timely comments from 18 various State soybean organizations, soybean producers, a national soybean trade association, and the Board. All comments were included in the information evaluated during the conduct of this review and are discussed below.

THE NATURE OF COMPLAINTS OR COMMENTS FROM THE PUBLIC CONCERNING THE ORDER

USDA received comments from 18 various State soybean associations, national trade associations, and soybean producers regarding the Order and/or the regulations in response to the published notice of review.

A comment from the chairman of the United Soybean Board discussed background information about the Program as well as rationale for the continuation of the Order. The comment from the Board chairman addressed the intent of the 610 review. The chairman also referenced the results of the 2004 request for a referendum, in which only 3,206 valid requests for a referendum were cast. A total of 66,388 valid votes were required to prompt a referendum. Additionally, the comment recognized the recent return on investment study, which evaluated Program activities from 1995-2001, and determined that for every \$1 invested, producers received \$6.75 in returns.

Thirteen comments addressed the process used by the Board for selecting contractors. To obtain contractors, the Board periodically announces Request for Proposals (RFP) for potential contractors who provide specific services for the Board. As part of the oversight responsibility, USDA reviews and approves all contracts between the Board and contractors. The Board continually evaluates the work of all contractors, who are subject to audits. Competitive bidding is used by the Board and subcontractors, when deemed necessary. USDA believes that all conflicts between the Board and contractors should be handled in an open and professional manner.

Eighteen comments received questioned how the Board manages the Program's finances. The Board's financial records are audited on an annual basis by an independent auditor. Through the Board's compliance program and auditing authority, Qualified State Soybean Boards (QSSB) are periodically reviewed to ensure proper accounting procedures are in place so that checkoff dollars are not commingled with non-checkoff dollars and are spent on authorized activities.

AMS also reviews and approves the annual financial audit of the Board, the operating and administrative budgets of the Board, and amendments made to either budget as the fiscal year progresses. Producers and organizations representing soybean producers are encouraged to attend State meetings and provide input during the decision-making process.

For budgeting purposes, the Board has adopted the use of a Budget Allocation Model, which allows all producers the opportunity to direct programs and funding. This model is used in conjunction with the Board's committee structure to allocate checkoff funds for Board activity. The Board is required under the Order to have its financial records annually reviewed by an independent certified public accountant. To date, the audits have not reflected any substantive reasons for concern and have indicated that the Board does adhere to the administrative cap set forth in the Act. Board financial information and meeting minutes are available to QSSBs and the general public upon request to the Board and are distributed to Board members.

The Board, by representation of producers nominated by State boards and appointed by the Secretary, is responsible for decisions that impact the entire soybean industry. Therefore, AMS understands the value of transparency of the Board's decisions and actions. In fiscal year 2006, Beyond the Bean magazine was distributed quarterly to producers to communicate educational, action-oriented checkoff activities of the Board. Additionally, Board and committee meetings are open to the public. The public, which includes QSSB representatives and producers, are afforded the opportunity to participate in Board and committee meetings and are encouraged to provide input in the decision-making process.

Fifteen comments made recommendations that involve changes to the Act, such as: Doubling the assessment rate, changing how Board members are selected, the removal of legislation authorizing the Coordinating Committee, allowing for the payment of membership dues with checkoff dollars, and allowing checkoff funds generated in States to remain under the sole discretion and control of the each respective State. However, implementation of these suggestions would require changes to language in the Act itself, which would require congressional action.

Fourteen comments recommended changes to the Order, including suggestions on how referendums are conducted and a request to correct an erroneously eliminated section that allows State checkoff programs to pay refunds and mandate that producers requesting a refund direct their total assessment to the Board. The Order was amended in January 2007 to add the eliminated section back into the Order. The Order currently allows for soybean producers to petition for a referendum every five years. Suggestions received from the public on how the Order can be revised concerning the referendum process have been forwarded to the Board for further consideration.

Five comments addressed the Board's decision to establish the United States Soybean Export Council (USSEC). AMS has reviewed all agreements and contracts to ensure that all activities

were performed and permissible under the Act and Order. Preliminary information pertaining to the creation of USSEC and impact upon ASA are anticipated and will be distributed to Board members. Such information will also be made available to the public upon request.

Five comments addressed the method used for calculating eligible soybean producers. According to the Act, the term “producer” is defined as “any person engaged in the growing of soybeans in the United States, who owns or shares the ownership and risk of loss of such soybeans.” USDA periodically reviews data available from the Farm Service Agency to determine the total number of producers eligible to participate in a request for referendum.

Two comments indicated that the period used for Minimum Assessment Provision by the Board should begin either September or October instead of the beginning of the calendar year. The calendar year is used in order to provide consistency among the various accounting periods used by the QSSBs.

THE COMPLEXITY OF THE ORDER AND THE EXTENT TO WHICH THE ORDER OVERLAPS, DUPLICATES, OR CONFLICTS WITH OTHER FEDERAL RULES AND, TO THE EXTENT FEASIBLE, WITH STATE AND LOCAL REGULATIONS

Based upon this review, USDA has determined that the Order is not unduly complex. USDA has not identified any relevant Federal rules or State and local regulations that duplicate, overlap, or conflict with this Order’s requirements. While there are organizations that exist to conduct soybean research, the Board works with these organizations complementarily. In many cases, the work being done by these research institutions is either fully or partially funded by the Board.

There are State programs that promote generic soybeans and soybean products. These State programs are, in most cases, affiliated with the Board as the QSSBs in their respective States or geographic units. Assessments are collected by QSSBs, portions of which are retained by their respective geographic units for local generic soybean promotion, research, and information.

Additionally, there are some organizations that exist solely to represent soybean producers. These organizations are voluntary in nature and serve different functions. The activities of these organizations concentrate in areas not covered by the Order, and therefore do not duplicate or conflict with the Order.

CHANGES TO THE ORDER SINCE PREVIOUS EVALUATION DUE TO TECHNOLOGICAL, ECONOMIC, OR OTHER FACTORS

USDA and the Board monitor the operations of the Order continually to ensure that the regulations address current industry conditions and that the regulations and administrative procedures are appropriate for current practices within the industry. The Board is provided the opportunity through rulemaking to make any changes to the Program to reflect industry operating practices. The Board is required to perform an evaluation of the Program every five

years, the primary objective of which is to consider and evaluate the Program’s overall effectiveness. An evaluation of Program activities from 1996 to 2001 showed that for each dollar invested, producers received a return of \$6.75.

Adjustment to Membership on the Board

As authorized by the Act and Order, the number of Board members nominated from certain States and geographical units is adjusted to reflect changes in production levels. This reapportionment is completed every three years and involves reviewing annual soybean production for each state and regional unit during the past five years. Those years with the highest and lowest production levels are not included in the analysis. The next review and reapportionment will be conducted in 2006 and become effective with the Secretary’s 2007 appointments to the Board.

Year	Total Adjusted Membership	States with Increased Membership	States with Decreased Membership	Other Changes
1994	59	Wisconsin Maryland	Florida South Carolina Georgia	Decrease the required number of annual Board meetings from four to three.
1997	62	Indiana Minnesota South Dakota North Dakota	Virginia	
2000	62	Kansas	Maryland	
2003	64	Maryland Michigan New York	New Jersey	New York qualified as a State unit and New Jersey was added to Eastern Region.

Other Modifications to the Order and Regulations

In 1993, the duplication of section numbers was corrected. Section numbers 1220.500 through 1220.560 now read 1220.600 through 1220.660. Additionally, the rules and regulations which implemented the Order were amended to provide additional time for the remittance of assessments by first purchasers to QSSBs and the Board. They were also amended to provide consistency with the reporting requirements of preexisting State Checkoff Programs for other commodities.

Due to the amendment, first purchasers are now able to remit the assessments collected from producers by the last day of the month following the month in which soybeans are marketed. In specified States, first purchasers are able to remit assessments by the last day of the month that follows the quarter in which soybeans are marketed, rather than by the 15th of the month. This change reduces and standardizes the workload for first purchasers who also collect and remit assessments under other Checkoff programs. It also provides approximately 15 additional days for first purchasers to compile the data and file reports with their respective QSSB.

These adjustments also terminated the requirement to use Board-issued non-producer status forms to exempt sales of soybeans from assessments. Soybean purchasers are now able to establish their own system of verifying assessable and non-assessable purchases of soybeans. The deletion of this requirement has reduced the paperwork burden imposed on purchasers but continues to hold them liable for failure to collect and remit assessments if they cannot verify non-producer status for soybeans not assessed.

In 1995, a review of the Order and regulations was conducted in response to the President's Regulatory Review Initiative of March 4, 1995. As a result, a number of paragraphs were identified that could be removed without adverse impact to the Program. The amendments and corrections to the rules (60 FR 58499) published on November 28, 1995, eliminated sections which were found to be duplicative, obsolete, or would avoid conflicting information.

Certain sections regarding initial membership on the Board and authority for three temporary members on the initial Board were found to be obsolete or duplicated in other sections and, therefore, were eliminated. Additionally, certain sections that originally implemented a statutory provision allowing producers to request refunds prior to and after the continuance referendum were eliminated. These sections became obsolete after a February 1994 referendum in which producers voted in favor of mandatory assessments based on 10 percent escrowed assessments paid at the end of each State's fiscal year and, therefore, were eliminated. In July 1995, producers were provided the opportunity to participate in a producer poll to request a refund referendum and determine whether refunds (at 10 percent of escrowed funds) should continue. The number of producers required to cause a referendum to be conducted did not sign the poll. Consequently, a referendum was not held and refunds were eliminated as of October 1, 1995. Therefore, provisions for establishing escrow accounts were no longer applicable and were eliminated.

In 1998, the estimated number of eligible soybean producers increased by 63.4 percent, from 381,000 soybean producers to 600,813 soybean producers, according to the results of a statistical survey.

In 1999, the Order was amended by removing Florida from the Eastern Region for Board nomination purposes and by combining Florida and Georgia to form a new geographic unit. The Board requested this realignment on behalf of Florida producers, who believed they would be better represented on the Board if they were combined with Georgia because of similar climates, agricultural practices, geographic locations, interests, and concerns. This realignment created the Southeast Region and increased the number of state and geographic units to 30.

In 2002, the rules and regulations were amended to require quarterly, as opposed to monthly, remittance and report assessments from producers and first purchasers of soybeans that marketed processed soybeans or soybean products in Delaware, Louisiana, South Carolina, Texas, and the Eastern and Western Regions. This change has reduced the administrative costs of monthly reporting imposed on these smaller soybean-producing States and geographic regions.

In 2003, procedures for soybean producers to request a referendum on the Order, as authorized under the Act, was amended. The Act now provides that USDA, five years after the conduct of the initial referendum and every five years thereafter, will provide soybean producers the opportunity to request a continuance referendum on the Order. Individual producers and other producer entities have the opportunity to request a referendum during a specified period as announced by USDA.

In 2005, all 17 commodity research and promotion orders and/or rules and regulations were amended to exempt any person that receives and handles solely 100 percent organic products from paying assessments to any research and promotion program administered by AMS. To be exempt under the Order, the person must operate under an approved organic system plan authorized by the National Organic Program (NOP) and produce and market only products that are eligible for a 100 percent organic label under the NOP.

Producer Polls and Requests for Referendums

As required by the Act and Order, soybean producers have the opportunity to request a referendum every five years from the initial producer referendum, which took place in 1994. There were opportunities to request a referendum in 1999 and in 2004, but producer polls lacked necessary participants to initiate a referendum.

On February 9, 1994, USDA conducted a referendum among soybean producers to determine whether the Program should continue. Of the 85,606 valid ballots cast, 53.8 percent of soybean producers that voted favored the program.

On July 26, 1995, USDA conducted a producer poll to determine whether producers supported a referendum to determine if refunds should continue. Only 48,782 producers participated in the poll, less than the 76,200 required to conduct a refund referendum. Refunds were discontinued on October 1, 1995.

From October 20, 1999, to November 16, 1999, USDA conducted a producer poll to determine whether producers supported conducting a continuance referendum on the Program, as required by the Act. Only 17,970 producers participated in the poll, less than the 60,082 required to prompt a referendum on the Program.

The most recent producer poll was conducted from May 1, 2004, to May 28, 2004. Of the 663,880 soybean producers eligible to participate, only 3,206 valid requests for a referendum were cast. A total of 66,388 valid votes were required to prompt a referendum.

Independent Economic Evaluation

In 2001, an evaluation of the Program was conducted in compliance with Title V of the Federal Agriculture Improvement and Reform (FAIR) Act of 1996. The evaluation provided information for policy and management decisions by the Board and was intended to provide information to producers who contribute to the Program about the performance of their investment from 1996 to 2001. The evaluation was conducted by World

Perspectives, Inc. and AgriLogic, Inc., who determined that for each dollar invested in the Program by producers, producers receive a return of \$6.75. Additionally, the evaluation underscored the importance among soybean producers of expenditures for research and promotion of soybeans and soybean products in international markets. The evaluation found that in general, research expenditures lead to higher yields and planted acres. The resulting higher level of production helps the United States meet the global demand for soybeans and maintain market share. Foreign promotion expenditures lead to expanded exports of U.S. soybeans, soybean meal, and soybean oil. The resulting expanded demand enhances the price of soybeans received by producers. Together, these expenditures provide a viable rate of return to producers that compares favorably to the returns and risks associated with other investment vehicles.

The next evaluation will be conducted in 2007 for the years 2002-2007. A Request for Proposals has been submitted by the Board to obtain a contractor to conduct the evaluation.

THE CONTINUED NEED FOR THE ORDER

AMS has determined that the Order should continue without change. Since its implementation in 1991, the Program has run effectively in accordance with the provisions of the Act, which is designed to expand domestic and international markets and to increase uses for soybeans. Derivative programs developed under the purview of the Order have helped to increase and maintain demand for soybeans.

Prior to World War II, the United States imported 40 percent of its edible fats and oils. At the advent of the War, this oil supply was cut, and processors turned to soybean oil. By 1940, the U.S. soybean crop had grown to 78 million bushels harvested on 5 million acres. From 1941 to 1942, U.S. soybean production doubled. The United States became the world's leading soybean-producing country and has maintained that position, except in 1947 when China briefly produced more soybeans than the United States.

In the early 1950s soybean meal became available as a low-cost, high protein feed ingredient and triggered an explosion in U.S. livestock and poultry production. Domestic consumption of soybeans continues to be driven by livestock and poultry production, representing over 90 percent of domestic soybean consumption.

Because U.S. soybean production has continued to grow and because the United States is a net exporter of soybean and soybean products, the international market for soybeans is significant to the supply and demand of soybeans and soybean products. Starting in the early 1970s, Latin America, led by Brazil, began to emerge as a major soybean-producing country. In 1974, Brazil's production surpassed that of China, and in 1975, Latin America's total production surpassed that of Asia, the major producers being Brazil and Argentina. Latin America also emerged as a major soybean exporter.

Of the almost 8 billion pounds of soybeans produced worldwide, 40 percent is produced in the United States, followed by Brazil and Argentina, which produce 24 percent and 18 percent,

respectively. Additionally, in 2004 world oilseed production exceeded 419 million short tons. Oil from soybeans comprises 57 percent of that total; other sources of oilseed include rapeseed, cottonseed, peanut, and sunflower seed.

In 2004, 2.3 billion pounds of soybeans were exported worldwide. The United States continues to be the world leader in soybean exports and is responsible for 48 percent of all soybean exports. Other major soybean exporters include Brazil and Argentina, which export 32 percent and 12 percent, respectively.

Also in 2004, over 223 million short tons of protein meal were consumed. Sources of protein meal include soybeans, rapeseed, cottonseed, and peanuts. Soybeans accounted for 67 percent of all protein meal consumed worldwide. In the same year, soybean oil accounted for 30 percent of worldwide vegetable oil consumption, followed by palm, rapeseed, and sunflower oils.

The growth of soybean's market share for oil and protein meal in the United States and overseas is critical considering competition from other countries, in addition to other competing sources of oil and protein meal. The United States has the only significant promotion program in place for building domestic and international consumer demand. Additionally, the Program funds research into uses of soybean and soybean products. Therefore, AMS has determined that the Order should continue without change.