UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency Washington, DC 20250 Notice AO-1453

For: AL, AZ, AR, CA, FL, GA, IL, KS, KY, LA, MD, MS, MO, NV, NM, NC, OK, SC, TN, TX, and VA State and County Offices

Assisting in the Upland Cotton Referendum

Approved by: Administrator

1 Overview

A Background

AMS is proposing to amend the Cotton Research and Promotion (Cotton Order) to implement Section 14202 of the Food, Conservation, and Energy Act of 2008 (Pub. L.110-234) (2008 Farm Bill), that amended the Cotton Research and Promotion Act (7 U.S.C. 2101–2118) (Cotton Act). The 2008 Farm Bill designated the States of Kansas, Virginia, and Florida in the definition of "cotton-producing State."

AMS conducted a formal rulemaking hearing before an Administrative Law Judge on the proposed amendments to the Cotton Order on December 5, 2008, in Washington, D.C. USDA issued the Secretary's Decision and Referendum Order on October 5, 2009. The decision proposes amendments to the Cotton Order and provides upland cotton producers and importers with the opportunity to vote in a referendum to determine if they favor the changes. According to the Cotton Act, a referendum among cotton producers and cotton importers is required to implement, amend, continue, or when appropriate, suspend, or terminate the Cotton Order or any of its provisions. According to the Cotton Act, AMS will provide an opportunity for all eligible persons to vote on the amendments to the Cotton Order. The referendum rules and procedures were published as a proposed rule with a request for comments published in FR on June 4, 2009. The final rule was published on the same day as the Secretary's Decision and Referendum Order.

Disposal Date	Distribution
January 1, 2010	Above State Offices; State Offices relay to County Offices

1 Overview (Continued)

A Background (Continued)

The Cotton Act, Section 10(b)(2), provides that an amendment is approved by a majority of cotton producers and importers subject to the Cotton Order voting in the referendum. In addition, the Cotton Act, Section 10(c) provides that the disapproval of any amendment to an order issued under this Cotton Act shall **not** be deemed to invalidate the Cotton Order. Therefore, this is a referendum ("**yes or no vote**") **only** on the amendments to the Cotton Order and **not** on the entire program.

Important: As in past referenda and sign-ups, this referendum may be audited, contested

in court, or both. Accordingly, it is extremely important that State and County

Offices follow this notice timely and accurately.

B Purpose

This notice provides instructions to State and County Offices about FSA's responsibilities for the upcoming Cotton Research and Promotion Program referendum.

C State and County Office Action

State and County Offices shall assist AMS in conducting the referendum October 13 through November 10, 2009, according to paragraph 2 and Exhibits 1 through 7.

Note: AMS provided referendum instructions.

AMS will be paying for only the costs associated with this referendum. State and County Offices shall list their expenses on the State and County Office FSA Transmittal of Results Sheet (Exhibit 6). County Offices shall maintain a register of associated costs and report their expenses on Exhibit 6, along with the referendum results. State Offices will summarize these costs and report on Exhibit 6, along with State summary results.

Important: County Offices shall not incur separate advertising and mailing expenses when announcing this referendum period. However, include excerpts from an AMS news release (Exhibit 7) entitled, "USDA Sets Referendum for Proposed Amendments to Cotton Research and Promotion Order" in routine County Office newsletters and free press. AMS news releases are available at http://www.ams.usda.gov, CLICK "Newsroom" and "Latest Releases".

D Contact

Direct questions about this notice or obtaining upland cotton referendum materials to Rick Pinkston, DAFO, at 202-720-1857.

Important: The FFAS Employee Forms/Publications Online Website is unavailable until further notice. In the interim, the upland cotton referendum materials will be e-mailed to State Offices directly from Rick Pinkston. State Offices shall forward the upland cotton referendum materials to the County Offices.

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2 Software to Support the Referendum

A Background

County Release No. 675 contains software for helping County Offices conduct the referendum.

B Identifying Producers With Share of Cotton in 2008

The software will:

• identify producers who shared in an acreage of upland cotton reported on FSA-578 during the 2008 crop year

Note: Owners of farms that had upland cotton grown in 2008, but who did **not** share in the crop, will be included regardless of the current status of the farm or owner.

- eliminate producers flagged as deleted in the name and address file
- **not** include producers with the total acreage reported as failed and not marketed
- for producers who were partnerships or joint ventures, identify and include the first level members as constituted in 2008
- for producers who were entities other than partnerships or joint ventures, identify the entity.

Note: Follow instructions in Exhibit 1 on eligibility to determine whether to add or delete a producer from the list.

C Printing List of Producers

The software will print a list of producers, as described in subparagraph B. The list, sorted by last name, includes the following:

- name
- address
- entity type
- whether the producer is multi-county.

This list will serve as the basis for the list required by Exhibit 1, subparagraph 3 B.

Note: Write the county name on the top of the list. The list is **not** available to the public.

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2 Software to Support the Referendum (Continued)

D Printing List of Multi-County Producers

For each multi-county producer on the list in subparagraph C, the software will also print the following:

- producer's name
- list of counties in which the producer is currently active
- State and county codes of the current control county.

Note: County Offices shall use this list to ensure that each producer votes only once.

E Running the Software

To print the lists in subparagraphs C and D for a county file group:

- on Menu FAX07001, click option "9","Common Provisions"
- ENTER "UPCNRF9,QRPRADJ1" on the command line.

3 Maintaining FSA's Impartiality

A State and County Office Action

FSA is assisting AMS by conducting this referendum at their request. State and County Office employees and COC members shall use caution so that it does not appear that FSA is showing bias or partiality. State and County Offices shall **not** become involved in the following:

- issues about USDA regulations in 7 CFR Part 1205
- encouraging a producer to cast a referendum vote or not
- determining eligibility other than in an official capacity
- prejudice for or against the Cotton Research and Promotion Program.

AMS Instructions for Conducting the Referendum

Cotton Research and Promotion Program

Referendum Period for the Cotton Research and Promotion Order (Order) Amendments

1 Overview

A Background

The Agricultural Marketing Service (AMS) is proposing to amend the Cotton Research and Promotion (Cotton Order) to implement section 14202 of the Food, Conservation, and Energy Act of 2008 (Pub. L.110-234), or "2008 Farm Bill", that amended the Cotton Research and Promotion Act (7 U.S.C. 2101–2118) ("Cotton Act"). The 2008 Farm Bill designated the States of Kansas, Virginia, and Florida in the definition of "cotton-producing state" effective beginning with the 2008 crop of cotton.

AMS conducted a formal rulemaking hearing before an Administrative Law Judge on the proposed amendments to the Order on Friday, December 5, 2008, in Washington, D.C. USDA issued the Secretary's Decision and Referendum Order on October 5, 2009. The decision proposes amendments to the Cotton Order and provides Upland cotton producers and importers with the opportunity to vote in a referendum to determine if they favor the changes. According to the Cotton Act, a referendum among cotton producers and cotton importers is required to implement, amend, continue, or when appropriate, to suspend, or to terminate the Order or any of its provisions. According to the Act, AMS will provide an opportunity for all eligible persons to vote on the amendments to the Order. The referendum rules and procedures were published as a proposed rule with a request for comments were published in the *Federal Register* on June 4, 2009 The final rule was published on the same day as the Secretary's Decision and Referendum Order.

The Cotton Act, Section 10(b)(2), provides that an amendment is approved by a majority of cotton producers and importers subject to the Cotton Order voting in the referendum. In addition, The Cotton Act, Section 10(c) provides that the disapproval of any amendment to an order issued under this Cotton Act shall not be deemed to invalidate the Cotton Order. Therefore, this a referendum ("yes or no vote") only on the amendments to the Order and not on the entire program.

B Responsibilities

The Administrator of AMS is responsible for conducting the referendum period and announcing its results.

Farm Service Agency (FSA) will assist in conducting the referendum period by:

- accepting requests of cotton producers for a referendum
- determining eligibility of cotton producers to file a request
- determining and reporting referendum results.

Note: Direct questions about this notice to Rick Pinkston, Office of DAFO, 202-720-1857.

C Purpose

The purposes of these instructions are to:

- describe the significance of the referendum
- establish procedures about:
 - County Office actions
 - State Office actions
 - counting requests
 - retention and disposition of referendum records
- establish instructions for determining:
 - producer eligibility
 - reporting referendum results.

2 Referendum Period

A Significance of the Referendum Period

Only eligible persons who choose to participate by providing their signature will cast their vote on the amendments to the Cotton Order. If results of the referendum show that a majority (more than 50 percent) of cotton producers and importers subject to the Cotton Order voting in the referendum approves of the amendments, then the amendments will be implemented.

If the resulting referendum indicates that less than 50 percent of referendum participants do not favor the amendments, then they will not be implemented.

B Time of Referendum Period

The referendum period shall:

- be held from October 13, 2009, through November 10, 2009
- be held in County FSA Offices for producers
- allow producers to request to sign up by contacting the applicable County Office.

3 Eligibility

A Eligibility Requirements

Any **person** who is 18 years or older and who, during crop year 2008, was engaged in the production of Upland cotton in the United States shall be eligible to participate in the referendum period.

Note: The Act defines "person" as any individual, partnership, corporation, association, or other legal entity. Only persons who meet the following eligibility requirements may participate in the referendum period.

- No person is entitled to sign up more than once, except that each individual partner of an
 eligible general partnership is entitled to participate in the referendum, but the partnership
 itself is not.
- Where a group of individuals is engaged in the production of Upland cotton under the same lease or cropping agreement, only the individual or individuals who signed or entered into the lease or cropping agreement are eligible to participate in the referendum period. Individuals who are engaged in the production of Upland cotton as joint tenants, tenants in common, or owners of community property, are each entitled to submit a request if they share in the proceeds of the required crop as owners, cash tenants, share tenants, sharecroppers, or landlords of a fixed rent, standing rent, or crop share.
- An officer or authorized representative of a qualified corporation, association, or limited partnership may submit a request for that corporation, association, or limited partnership.
- A guardian, administrator, executor, or trustee of any qualified estate or trust may submit a request for that estate or trust.
- An individual may not submit a request for another individual.
- Participation in the referendum by proxy or Power of Attorney is not authorized.

B Determining Eligibility

- The FSA County Office serving the county in which the producer's farm is located shall be the producer's polling place. For a person not participating in an FSA program, the opportunity to vote in a referendum will be provided at the FSA County Office serving the county where the person owns or rents land. If a person's operation is located in several counties, the voting office shall be determined based on the major portion of the operation's location.
- County FSA Offices are instructed to prepare lists of all known, eligible Upland cotton producers in each county that it served during crop year 2008.
- Each person on the County FSA Office lists may participate in the referendum.
- Eligible producers must date and sign their name on the County FSA Office In-Office Referendum Sheet (Exhibit 2).

Note: Exhibit 2 is not available to the public. Do not provide copies for any reason to anyone.

- Eligible producers requesting to cast a ballot by mail must request and complete the referendum ballot CN-100 (Exhibit 4), and send it back to their County Office.
- Under no circumstance should any person wishing to request a referendum be refused the opportunity to do so.
- A person whose name does not appear on the County FSA Office list may participate in the referendum period. This person must provide documentation that demonstrates that the person was a cotton producer during crop year 2008.
- Producers may request to sign up by mail.
- Requests for absentee referendum packages may be made by mail, FAX, or telephone by the producer or on the producer's behalf. In this case, the absentee referendum package shall be mailed directly to the producer at the address provided. The ballot may also be obtained by the Internet at http://www.ams.usda.gov/Cotton.
- Requests must be for only 1 absentee package.

Note: A list of names is not an individual request.

Note: Cotton producers should make requests to the County FSA Office where the producer owns or rents land. If the producer owns or rents land in more than 1 county, the producer should make requests at the County Office where FSA maintains and processes the producer's administrative farm records.

- When a request for an absentee referendum package is received by mail, FAX, or telephone, the County Office shall:
 - enter the date the request is received on the Register of Absentee Referendum Requests Sheet (Exhibit 3)

Note: Exhibit 3 is not available to the public. Do not provide copies for any reason to anyone.

- list the producer's name and date received in Exhibit 3.
- send the producer an absentee referendum package containing a copy of the referendum ballot (Exhibit 4) and a letter of explanation of the referendum period (Exhibit 5), requiring the producer to return the following documents to be received by the County Office by COB November 10, 2009.
- a copy of at least 1 sales document must accompany the returned referendum sheet

Note: Sales documents are required even though the producer is shown on the county list.

- a completed and signed referendum letter (Exhibit 4)
- when a completed referendum letter (Exhibit 4) is returned, enter the date received on Exhibit 3, "Remarks"
- enter "Ineligible" on Exhibit 3, "Remarks" if the:
 - producer failed to submit sales evidence
 - referendum letter was **not** received by the County Office by November 10, 2009
 - referendum letter was not completed properly.

Note: It is the responsibility of the person to provide information needed by the County FSA Office to determine eligibility.

It is not the responsibility of the County FSA Office to obtain this information. Failure to provide sales receipts will require the County FSA Office to determine that the person is ineligible to participate in the referendum period, and shall notate "ineligible" next to the person's name on the County FSA Office Referendum Sheets, Exhibit 2 and 3, "Remarks" as applicable.

Note: Where producers have been requested to submit sales receipts, the County Office shall keep the sales receipt on file. If producers want the sales receipt returned, make a copy for the file and return the sales receipt to the producer.

4 Counting Requests

The counting of requests and determination of results shall begin no later than the fifth day following the close of the referendum period, or November 17, 2009. Such canvassing shall be in the presence of at least 1 member of the FSA County Office and shall be open to the public. The canvassing and ballots shall be handled in such a manner so that no member of the public may see how any person voted in the referendum. The County Office of the FSA representative shall supervise the opening of the sealed ballot box.

The County FSA Office shall determine the number of:

- ineligible producer in-office requests
- eligible producer in-office requests
- eligible mail, FAX, or telephone producer requests
- ineligible mail, FAX, or telephone producer requests.
- Spoiled ballots.

5 Reports and Records

A Results of the Referendum

The County Office shall transmit the results of the referendum to the State FSA Office using the State and County Office FSA Transmittal of Results Sheet (Exhibit 6). Referendum results shall be transmitted as soon as possible after counting is concluded, but no later than November 20, 2009.

County FSA Offices, where no persons requested a referendum, shall submit Exhibit 6 showing a negative report to the State Office no later than November 20, 2009.

Caution: County Offices shall maintain all documentation, including copies of any correspondence, copies of sales documentation, referendum sheets, and other referendum materials, until further notice. Place all materials in a box clearly marked "**Retain until further notice**" and seal the box.

The results of the referendum will probably be audited and then contested in court. AMS may also require County Offices to send all of the materials used in the referendum to their National Office. It, therefore, becomes mandatory for all County Offices to be extremely meticulous in filing the voting materials.

B State FSA Office Reporting

State FSA Offices shall:

- review all County Office data for accuracy
- summarize the results of the referendum received from all County FSA Offices within the State on Exhibit 6
- transmit the completed Exhibit 6 by e-mail to rick.pinkston@wdc.usda.gov by Nov. 20, 2009.

In-Office Referendum Sheet

State: In-Office Referendum Sheet County FSA Office Referendum Sheet Page of				
Date	Print Name	Signature	Remarks	
1.				
2.				
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Register of Absentee Referendum Requests Sheet

State: Register of Absentee Referendum Requests County FSA Office Referendum Sheet Page of				
Date Received	Print Name	Date Returned	Remarks	
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2.				
3.				
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Example Referendum Ballot

Example Referendum Ballot

Form Approved OMB No. 0581-0093

OFFICIAL REFERENDUM BALLOT COTTOM RESEARCH AND PROMOTION ORDER

To participate in this referendum, please complete Sections I and II of this ballot and include a copy of at least 1 sales receipt and return these documents to the County FSA Office where your form is located. If your operation is located in several counties, the voting office shall be determined based on the major portion of the operation's location. For your ballot to be counted during the referendum period, your request must be received no later than November 10, 2009

	I. VOTE (Ma	rk one box only)
Do you favor the following	amendments to the C	otton Research and Promotion Order:
	YES	NO
1. Revise 7 CFR 1205.314, of t	he definition of "cotton-	producing state" to read as follows:
Arizona; Arkansas; California-N	Nevada; Florida; Georgia	States and combination of States: Alabama; a; Kansas; Louisiana' Mississippi; Missouri-Illinois; New nnessee-Kentucky; Texas; Virginia.
2. Revise 7 CFR 1205.319, the	definition of "cotton-pro	oducing region" to read as follows:
Alabama, Florida, Georgia, Nor	th Carolina, South Caro	groups of cotton-producing States: (a) Southeast Region lina, and Virginia; (b) Midsouth Region: Arkansas, e-Kentucky; (c) Southwest Region: Kansas, Oklahoma evada, and New Mexico.
II. SIGNATURE-ALL	BALLOTS MUST B	E SIGNED AND DATED BELOW IN ORDER
		COUNTED
following information contained belief, and is made in good faith	TO BE (de producer or importer of the don this ballot is true, con a lifthis ballot is being of the productity engaged in the pro-	counted as defined by the referendum procedures and that the omplete, and correct to the best of my knowledge and east on behalf of any group of individuals, partnerships, duction or importation of cotton, I also CERTIFY that I
following information contained belief, and is made in good faith corporation, or other business of have the authority to cast this b	TO BE (de producer or importer of the don this ballot is true, con a lifthis ballot is being of the productity engaged in the pro-	counted as defined by the referendum procedures and that the omplete, and correct to the best of my knowledge and east on behalf of any group of individuals, partnerships, duction or importation of cotton, I also CERTIFY that I
following information contained belief, and is made in good faith corporation, or other business e	TO BE (de producer or importer of the don this ballot is true, con a lifthis ballot is being of the productity engaged in the pro-	counted as defined by the referendum procedures and that the omplete, and correct to the best of my knowledge and east on behalf of any group of individuals, partnerships, duction or importation of cotton, I also CERTIFY that I dence thereof if requested.

Example Referendum Ballot (Continued)

BURDEN AND NONDISCRIMINATION STATEMENTS

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0093. The time required to complete this information collection is estimated to average 6 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2800 (voice and TDD).

To file a complaint of Discrimination, write to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 845-6136 (Spanish) or (800) 877-8339 (TDD) or (866) 377-8642 (Federal-relay). USDA is an equal opportunity provider and employer.

Important: Exhibit 4 shall be printed on **FSA letterhead**. Do **not** alter or modify the language used in Exhibit 4.

Example Letter of Explanation of the Referendum Period

Dear Producer:

The United States Department of Agriculture, Agricultural Marketing Service (AMS) is proposing to amend the Cotton Research and Promotion (Cotton Order) to implement section 14202 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-234), or "2008 Farm Bill," that amended the Cotton Research and Promotion Act (7 U.S.C. 2101-2118) ("Cotton Act"). The 2008 Farm Bill designated the States of Kansas, Virginia, and Florida in the definition of "cotton-producing state."

AMS conducted a formal rulemaking hearing before an Administrative Law Judge on the proposed amendments to the Order on Friday, December 5, 2008, in Washington, D.C. USDA issued the Secretary's Decision and Referendum Order on October 5, 2009. The decision proposes amendments to the Cotton Order and provides Upland cotton producers and importers with the opportunity to vote in a referendum to determine if they favor the changes. According to the Cotton Act, a referendum among cotton producers and cotton importers is required to implement, amend, continue, or when appropriate, to suspend, or to terminate the Order or any of its provisions. According to the Act, AMS will provide an opportunity for all eligible persons to vote on the amendments to the Order. The referendum rules and procedures were published as a proposed rule with a request for comments were published in the *Federal Register* on June 4, 2009. The final rule was published on the same day as the Secretary's Decision and Referendum Order.

The United States Department of Agriculture (USDA) is providing eligible cotton producers an opportunity to request a referendum regarding continuation of the 1990 amendments to the Cotton Research and Promotion Act.

The Cotton Research and Promotion Program is a cotton producer and importer funded, self-help marketing program initiated by an Act of Congress in 1966. USDA oversees the administration of this program. The purpose of this program is to strengthen Upland cotton's competitive position and to maintain and expand domestic and foreign markets for Upland cotton.

To participate in the referendum, please complete the attached form and return it to the County FSA Office listed above. For your signature to be counted during the referendum period, your request must be received in the County Office not later than **November 10, 2009**.

A sales document for cotton you produced during the producer representative period of January 1, 2008, to December 31, 2008, must accompany your completed referendum form.

Sincerely,			
County Executive Director	_		

Important: Exhibit 5 shall be printed on **FSA letterhead**. Do **not** alter or modify the language used in Exhibit 5.

State and County Office FSA Transmittal of Results Sheet

	State County		
			Number of Requests
1.	Eligible in-office producer requests.		
2.	Ineligible in-office producer requests.		
3.	Eligible mail, FAX, or telephone producer requests.		
4.	Ineligible mail, FAX, or telephone producer requests.		
5.	Total eligible in-office and mail Upland cotton producer requests (Sum of 1 and 3)		
List	State and County Expenses (For Use by State and County Offices).		1
6.	List Grade and Title of personnel working on referendum for referendum, including COC	Hours Worked	Costs \$
	a.		
	b.		
	c.		
	d.		
	e.		
	7. Total Hours Worked:		
8.	Reproduction Costs.		
9.	Mailing Costs.		
10.	Envelope Costs.		
11.	Postage Costs.		
		12. Total Costs:	

Example of Referendum For Proposed Amendments



PROGRAM ANNOUNCEMENT

AGRICULTURAL MARKETING SERVICE

United States Department of Agriculture ♦ 1400 Independence Ave., SW ♦ Room 2632-S Washington, DC 20250 ♦ (202) 720-8998 ♦ World Wide Web: http://www.ams.usda.gov

AMS No. 177-09

Sam Jones (202)720-8998 samuel.jones@ams.usda.gov Billy Cox (202)720-8998 billy.cox@ams.usda.gov

USDA SETS REFERENDUM FOR PROPOSED AMENDMENTS TO COTTON RESEARCH AND PROMOTION ORDER

WASHINGTON, October 5, 2009 -- The U.S. Department of Agriculture today announced that a referendum will be conducted among U.S. Upland producers and importers. The referendum is scheduled for Oct. 13, 2009, through Nov. 10, 2009.

The Agricultural Marketing Service (AMS) is proposing to amend the Cotton Research and Promotion Order (Order) to implement section 14202 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) that amended the Cotton Research and Promotion Act (Act). The 2008 Farm Bill provided that the states of Kansas, Virginia and Florida be separate states in the definition of "cotton-producing state."

According to the Act, a referendum among cotton producers and importers is required to implement, amend, continue, or when appropriate, to suspend, or to terminate the Order or any of its provisions. According to the Act, the AMS will provide an opportunity for all eligible persons to vote on the amendments to the Order.

Producers will have an opportunity to vote by mail or through their respective Farm Service Agency County office and by mail for importers. All known cotton importers will be mailed a ballot and referendum instructions. Ballots will also be available on the Internet at http://www.ams.usda.gov/cotton.

The final referendum rules and the proposed rule and referendum order will be published in the Oct. 5, 2009, *Federal Register*, and can be found on the Internet at: http://www.regulations.gov. For more information, contact Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2639-S, Washington, D.C. 20250-0224, telephone (202)720-6603, facsimile (202)690-1718, or email at Shethir.Riva@ams.usda.gov.

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