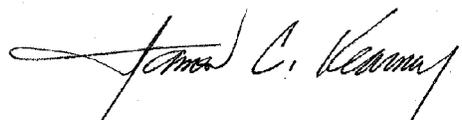


For: State and County Offices

**Soybean Promotion and Research Program
Request for Referendum**

Approved by: Associate Administrator for Operations and Management



1 Overview

**A
Background**

The Soybean Promotion and Research Order (Order) was implemented July 9, 1991, as authorized by the Soybean Promotion, Research and Consumer Information Act (Act), to maintain and expand existing markets and develop new markets for soybeans and soybean products.

The Act required the Secretary to conduct a referendum among eligible soybean producers to determine whether the Order should be continued. In the referendum held February 1994, 53.8 percent of producers voting favored continuing the Order.

The Act also required that the Secretary conduct a producer poll, within 18 months of the Secretary's announcement of the results of the initial referendum to determine whether eligible producers favor conducting a referendum on the continuance of payments of refunds under the Order.

In the July 25, 1995, nationwide poll of soybean producers, only 48,782 of the 76,200 needed to favor a refund referendum participated in the poll. Consequently, refunds were discontinued on October 1, 1995.

The Act provides that the Secretary, 5 years after the conduct of the initial referendum, will give soybean producers the opportunity to request an additional referendum on the Order. If enough producers request a referendum, then a referendum would be held within a year.

The Administrator of AMS is responsible for conducting the Request for Referendum.

Continued on the next page

Disposal Date April 1, 2000	Distribution State Offices; State Offices relay to County Offices
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Notice AO-1205

1 Overview (Continued)

A

Background (Continued)

FSA will assist in conducting the Request for Referendum by:

- publicizing the Request for Referendum
 - providing a place to request a referendum
 - determining the eligibility of challenged producers
 - counting and reporting Request for Referendum results.
-

B

Purpose

This notice:

- describes the significance of the Request for Referendum
 - provides general producer eligibility requirements for participation in the Request for Referendum
 - provides clarification about posting of 7 CFR part 1220, Subpart F and other Request for Referendum information
 - provides procedures on:
 - County Office actions
 - combined County Offices
 - appeal of COC or designee decisions
 - resolution of challenges
 - canvassing request lists
 - disposition of records
-

Continued on the next page

Notice AO-1205

1 Overview (Continued)

B

Purpose (Continued)

- provides instructions for:
 - distribution of forms to producers requesting a referendum
 - determining the eligibility of challenged requesters
 - counting and reporting Request for Referendum results
 - provides questions and answers on the Request for Referendum (Exhibit 1)
 - provides summary of the Soybean Promotion and Research Act and Order (Exhibit 2)
 - provides County report form (Exhibit 3)
 - provides State report form (Exhibit 4)
 - provides a soybean producer Request for Referendum calendar (Exhibit 5)
 - provides sample letters notifying persons of challenges of their eligibility and appellants of the disposition of their appeals (Exhibit 6)
 - provides press release (Exhibit 7)
 - provides LS-51-1 (Exhibit 8)
 - provides LS-51-2 (Exhibit 9)
 - provides 7 CFR Part 1220 Subpart F (Exhibit 10)
 - provides 1-page fact sheet on Eligibility (Exhibit 11)
 - provides 1-page fact sheet on How to Request a Referendum (Exhibit 12)
 - provides 1-page fact sheet on documentation needed if challenged (Exhibit 13)
 - provides transmittal letter from County FSA Office to soybean producer requesting LS-51-1 (Exhibit 14)
-

Notice AO-1205

2 General Information on the Producer Request for Referendum

A

Publicity

State and County Offices shall immediately, without incurring expense, begin publicizing the Request for Referendum, using Exhibit 7, via:

- newspapers
 - electronic media
 - county newsletters
 - radio or TV.
-

B

Posting

Clarification

County Offices shall post:

- a copy of Exhibit 10 in a conspicuous place
- a copy of Exhibit 1
- a copy of Exhibit 2
- one page fact sheet on Eligibility (Exhibit 11)
- one page fact sheet on How to Request a Referendum (Exhibit 12)
- one page fact sheet on documentation needed if challenged (Exhibit 13)

Note: County Office shall provide a copy of Exhibit 10 upon request.

C

County Office Actions

County Offices shall **not**:

- deny any person the opportunity to request a referendum during the Request for Referendum period
 - discuss or attempt to clarify questions of eligibility beyond information provided in 7 CFR part 1220, Subpart F as summarized in Exhibit 1 and Exhibit 11
 - require evidence of eligibility or make any determination of any person's eligibility, before the County Office receives a valid challenge of the person's eligibility and COC or designee declares that person ineligible.
-

Continued on the next page

Notice AO-1205

2 General Information on the Producer Request for Referendum (Continued)

**D
Combined
County Offices**

County Offices shall maintain separate lists of soybean producers who participate in the Request for Referendum for each county in the combination. The requests shall be kept separate, by county, and must be reviewed and reported separately by county.

**E
Request for
Referendum
Forms**

LS-51-1 (Exhibit 8) and LS-51-2 (Exhibit 9) shall be provided by each State Office using either of the following sources:

- on BBS from the FSA Form Library
- FSA Form Online Website (<http://www.fsa.usda.gov/dam/forms/fsaforms.asp>).

These forms must be downloaded and used for the Request for Referendum. Exhibits 8 and 9 are provided for informational purposes only.

County Offices shall reproduce copies of LS-51-1 and LS-51-2 as needed.

Producer Request for Referendum forms are listed in this table

Number	Title	Description
LS-51-1	Producer Request for Referendum	Each person who wants to request that the Secretary conduct a referendum must complete LS-51-1, and sign it, certifying that they meet the eligibility requirements.
LS-51-2	List of Soybean Producers Requesting a Referendum	County Offices will complete LS-51-2.

Continued on the next page

Notice AO-1205

2 General Information on the Producer Request for Referendum (Continued)

F

**List of Producers
Requesting a
Referendum**

Anyone requesting LS-51-2, either in-person or in writing shall be provided a copy by the County Office.

Do **not** relinquish custody of any original list unless directed to do so by EDSO.

Keep a record of all producers requesting a copy of this list.

G

Posting Requests

County Offices shall post an updated copy of LS-51-2 in a conspicuous public location during regular business hours, beginning on October 20, 1999, through December 2, 1999.

H

**Counting and
Reporting
Results**

County Office will count the requests for a referendum on December 14, 1999.

I

**Reporting
Request for
Referendum
Results**

Each County Office shall prepare a written report of the results (Exhibit 3) and send it to the State Office by December 16, 1999.

Each State Office shall prepare a written report (Exhibit 4) and send it to Operations Review and Analysis Staff (ORAS) by December 20, 1999.

J

**Work
Measurement
and Workload
Reporting**

County Offices shall record time for assisting in conducting the Soybean Producer Request for Referendum in Work Item 102, "Service Performed for Government Agencies".

Notice AO-1205

3 Producer Request for Referendum

A

Significance of Request for a Referendum

Only producers who want to request a referendum on the Order will participate in the Request for Referendum. If the results of the Request for Referendum shows that at least 10 percent (not in excess of one-fifth of which may be producers in any 1 State) of all eligible producers want a referendum, the referendum will be held within 1 year.

B

Request for Referendum Procedures

Participants must be provided the opportunity to request a referendum during regular business hours.

Each person who is eligible according to paragraph 4 will be provided the opportunity to request a referendum on the Order.

Each eligible producer must complete LS-51-1 and sign the certification statement on the form. Only completed LS-51-1's will be considered valid requests for a referendum. LS-51-1's:

- shall be available during regular business hours and may be requested in person, by mail, or by FAX at County FSA Offices from October 20, 1999, to November 16, 1999
- may be returned in person, by mail, or by FAX
- returned in person or by FAX must be received in the appropriate County FSA Office no later than COB November 16, 1999
- returned by mail shall be postmarked by November 16, 1999, and received in the County FSA Office no later than COB December 1, 1999.

Note: County Office shall provide Exhibit 14 as a transmittal to soybean producers making requests by mail or FAX.

Eligible participants who obtain LS-51-1 in person at the appropriate County Office may complete and return the form in person on the same day.

Continued on the next page

3 Producer Requests for Referendum (Continued)

**B
Request for
Referendum
Procedures
(Continued)**

For each returned LS-51-1, the county FSA personnel shall enter the following information on LS-51-2:

- name of individual soybean producer or name of producer entity representative and entity represented
- method used to request LS-51-1 (mail, FAX, or in-person)
- the date LS-51-1 was received by **mail**, by **FAX**, or **in person** in the County 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
- postmarked date of a **mailed** LS-51-1, in addition to the date it was received in the County 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.

For any challenges of a producer's or producer entities' eligibility according to subparagraph 4 B, the county FSA personnel shall make a "check mark" in the space provided on LS-51-2, indicating that a producer's or producer entities' eligibility has been challenged. After the challenge is resolved, **ENTER** "eligible" or "ineligible" in the space provided on LS-51-2.

County Offices shall, at all times, maintain control of the master (original) copies of LS-51-1 and LS-51-2. A copy of each LS-51-2 shall be posted and made available for public inspection each day beginning on October 20, 1999, through November 16, 1999.

Anyone requesting LS-51-2, either in-person or in writing, shall be provided a copy by the County Office. The County FSA Office shall keep a record of all producers requesting a copy of this list.

4 Eligibility, Challenges, Appeals, and Resolutions

A

Eligibility

To be eligible to request a referendum, an individual must have been a “person” engaged in the growing of soybeans in the United States who owns, or shares the ownership and risk of loss of such soybeans from January 1, 1997, through November 16, 1999.

Note: The Act defines “person” as any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

Groups of individuals, such as any of the following, engaged in the production of soybeans as a producer entity, will be entitled to make only 1 request:

- members of a family
- joint tenants
- tenants in common
- partnership
- owners of community property
- a corporation.

Note: Individual members of a group; such as spouse, children, siblings, parents, tenant, partner, shareholder, etc., are eligible to request a referendum in addition to the request submitted by the group, if they have, as an individual, sold soybeans of their own production during the representative period.

Sales documents shall be considered adequate evidence of ownership and risk of loss of soybeans.

Participation in the Request for Referendum by proxy or Power of Attorney (to act for another) is not authorized, except that an authorized representative of any eligible producer entity (other than an individual producer) may request a referendum on behalf of that entity. This individual must certify that he or she is authorized by the entity to take such action. Any individual member of a group who is an eligible producer separate from the group may request a referendum as a producer.

Continued on the next page

Notice AO-1205

4 Eligibility, Challenges, Appeals, and Resolutions (Continued)

B

Challenges

A person's eligibility to request a referendum may be challenged by any person. To be valid, the challenge must:

- be signed by the challenger
- be in writing
- include the full name of the individual or other producer entity being challenged
- be made at anytime during regular business hours, from October 20, 1999, to December 2, 1999
- be on a separate piece of paper.

Any invalid challenge will **not** be processed by FSA. FSA will document why the challenge was not processed.

County Offices shall:

- accept **all** challenges, valid and invalid
- notate by a "checkmark" in the space provided on LS-51-2 that a producer has been challenged
- **not** become involved in:
 - issues relating to the law as documented in the **Federal Register**
 - showing bias toward Request for Referendum results
 - determinations of eligibility, other than in an official capacity, about a challenged producer.

Note: FSA employees shall not challenge producers in an official capacity. FSA employees can challenge producers as an individual or citizen. Once the challenge period is over, it is too late for anyone to challenge in any capacity.

Continued on the next page

4 Eligibility, Challenges, Appeals, and Resolutions (Continued)

C

Determination of Challenges

COC or designee shall make all determinations concerning the eligibility of producers who have been properly challenged, including STC, SED, COC, CED, and FSA employees, with the following exceptions:

- COC shall resolve challenges of STC, SED, CED, and FSA Office and field personnel eligibility

Note: This action shall not be delegated.

- other COC members shall resolve a challenge of a COC member's eligibility.

Use whatever sources of information available to determine producer eligibility, including, but not limited to:

- COC, CED, or FSA employees personal knowledge
- FSA records, such as, FSA-658, FSA-578, etc.

If eligibility can be determined without additional evidence, notify the producer, in writing (Exhibit 6), of the challenge and resolution as soon as possible.

Note: Fully document action taken and determination made in resolving each producer challenge. Documentation shall be on or attached to the challenge.

If COC or designee is unable to determine eligibility without additional evidence, and therefore declares the challenged producer ineligible, notify the producer as expeditiously as possible, but not later than December 7, 1999, of the challenge and the determination of ineligibility. Make every effort to contact the producer by telephone as well as sending a written notification (Exhibit 6). Document the date and time of all telephone calls and when the person was actually contacted.

Continued on the next page

Notice AO-1205

4 Eligibility, Challenges, Appeals, and Resolutions (Continued)

C

Determination of Challenges (Continued)

Inform producers of:

- their appeal rights
- deadline for filing an appeal
- their right to a hearing
- their right to submit evidence of eligibility.

If the producer determined ineligible does not provide necessary documentation or appeal within the time allotted, COC or designee shall:

- **not** change their previous determination
 - document that the person failed to respond
 - notate on LS-51-2 that the person is ineligible.
-

D

Appeals

A producer determined to be ineligible by COC or designee may file an appeal at the County Office within 3 business days after notification of such decision, but no later than COB December 10, 1999.

Note: If an appeal hearing is requested, the hearing must be held and the appeal resolved by COC, no later than COB December 13, 1999.

Evidence to prove soybean production during the representative period, January 1, 1997, through November 16, 1999, may include, but is not limited to:

- sales documents
- other similar documents.

Note: Do **not** require that specific documents, such as tax records, be submitted. It is the responsibility of the challenged producer to provide whatever documentation may be needed to make a determination. It is not the responsibility of FSA to obtain this documentation.

Notify all appellants of the disposition of their appeals no later than COB December 13, 1999.

Continued on the next page

4 Eligibility, Challenges, Appeals, and Resolutions (Continued)

**E
Resolved
Challenges**

A challenge shall be determined to be resolved if:

- the determination of COC or designee is not appealed by December 10, 1999
- there has been a determination by COC or designee after appeal.

Fully document actions taken and determination made in COC minutes. COC or designee determination is final, and no further appeal is allowed

Notice AO-1205

5 Canvassing

A Canvassing LS-51-1

The canvassing of LS-51-1's and determination of results shall take place as soon as possible after the opening of the County Office on December 14, 1999.

- The process shall be open to the public and the date and time shall be advertised by whatever means are available at no cost.
- The public may view the canvassing process from an area designated by CED or designee, but may not interfere with the process.

CED or designee shall:

- supervise the canvassing, by at least two FSA employees, of LS-51-1
- determine the number of invalid requests.

An invalid request for a referendum may include instances where LS-51-1:

- is **not** signed and/or all required information has not been provided
- returned in person or by FAX was not received by November 16, 1999
- returned by mail was not postmarked by November 16, 1999
- returned by mail was not received in the County FSA Office by December 1, 1999
- is mutilated or marked in such a way that any required information on the form is illegible
- **not** returned to the appropriate County FSA Office.

During the canvassing process, eligibility questions or challenges are too late to be considered.

Any LS-51-1 determined invalid shall not be considered as a request for a referendum.

Notice AO-1205

6 Counting Requests for a Referendum

A

Counting County Office Results

The requests for a referendum shall be counted by COC or designee on December 14, 1999. Requests for a referendum shall be counted as follows:

- total number of producers **registering** to request a referendum
- number of eligible producers requesting a referendum
- number of challenged producers deemed ineligible
- number of challenged producers deemed eligible
- total number of challenged producers
- number of invalid requests for a referendum.

Record the data on the form provided in Exhibit 3. The public may witness the counting from an area designated by CED or designee, but may not interfere with the process or be privy to the results.

7 Reports and Records

A

Request for Referendum Results

Results of the Request for Referendum for each county shall not be made available to the public until the County Office has been notified by the Administrator, FSA, that the final results have been released.

The County Office shall:

- transmit the results of the Request for Referendum to the State Office as soon as possible, but no later than COB December 16, 1999
 - post the Request for Referendum results for 30 days in the County Office, in a conspicuous place accessible to the public, after notification by the Administrator, FSA, that the final results have been released.
-

Continued on the next page

7 Reports and Records (Continued)

B
County Office
Reporting

County Offices shall:

- submit a negative report (Exhibit 3) if no requests for a referendum are made in the county
- transmit the completed Exhibit 3 by FAX to SED no later than December 16, 1999.

The county report shall be certified by CED or designee and retained, along with all Request for Referendum material according to subparagraph D.

C
State Office
Reporting

State Offices shall:

- review all County Office data for accuracy
- summarize the results of the Request for Referendum received from all County Offices within the State (Exhibit 4)

Note: All County Offices in the State must submit a report.

- transmit a completed Exhibit 4 showing the results of the Request for Referendum received from all County Offices within the State by **FAX** to Director, Operation Review and Analysis Staff, on 202-690-3354, no later than December 20, 1999.
- **not** make results available to the public until after the Administrator, FSA has notified SED that the final results have been released.

The State report shall be certified by SED and maintained where it shall be available for public inspection for a period of not less than 12 months.

D
Disposition of
Records

County Offices shall retain all Request for Referendum materials in a sealed container marked with the identification of the soybean Request for Referendum in the custody of CED for a period of not less than 12 months.

If no notice to the contrary is received from EDSO within 12 months after the results of the Request for Referendum have been announced, the records shall be destroyed in a manner that will not allow their reconstruction.

Questions and Answers on Request for Referendum

1. How was the soybean checkoff program established?

Producers worked for the passage of the Federal legislation--the Soybean Promotion, Research, and Consumer Information Act (Act) (which was part of the 1990 Farm Bill)--that authorizes the program. The Soybean Promotion and Research Order (Order) (published on July 9, 1991) outlines how the program is to be carried out. Assessments began September 1, 1991. In a February 9, 1994, referendum, a majority of producers voted to continue the program.

2. Who administers the program?

The program is administered by the United Soybean Board (Board), which is composed of 62 producer representatives from 29 States and 2 groups of States. State representation is based on volume of soybean production.

3. What is a Request for Referendum?

The Act requires that the Secretary of Agriculture, 5 years after the conduct of the initial referendum, will provide soybean producers the opportunity to request an additional referendum on the Order. If the results show that at least 10 percent (not in excess of one-fifth of which may be producers in any one State) of all eligible producers want to have a referendum, it will be held within 1 year.)

4. Where and when will the Request for Referendum be conducted?

The Request for Referendum will be conducted at County Farm Service Agency (FSA) Offices. Individual producers and other producer entities will be provided the opportunity to request a referendum from October 20, 1999, through November 16, 1999, at the County FSA Office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum would be provided at the County FSA Office serving the county where the producer owns or rents land. Forms for requesting a referendum may be requested by mail, in person, or facsimile beginning October 20, 1999, through November 16, 1999. Mail in requests must be postmarked by November 16, 1999, and received in the County FSA Office by December 1, 1999. All other requests made by facsimile or in person, must be received in the County FSA Office by November 16, 1999.

Continued on the next page

Questions and Answers on Request for Referendum (Continued)

5. Who is an “eligible producer”?

Any person (the Act defines “person” as any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity) who, from January 1, 1997 through November 16, 1999, has been engaged in the growing of soybeans in the United States and who owns or shares the ownership and risk of loss of such soybeans.

6. Can a spouse/child, partner participate in the Request for Referendum?

A group of individuals--such as members of a family, joint tenants, joint venture, tenants in common, a partnership, or owners of community property--is a producer entity and is entitled to request a referendum only once. However, any member of a group may request a referendum if he or she is an eligible producer separate from the group.

7. Can a farm manager or other representative with power of attorney sign-up to request a referendum?

A farm manager or other representative may sign-up for a producer entity-- other than an individual-- for which they have a power of attorney providing the entity meets all other criteria. Such individual must certify that he or she is authorized to take such action. Participation must be in the County FSA Office in, or serving the county, in which the producer entity’s administrative records are kept or where the producer entity owns or rents land.

8. Do all eligible producers participate in the Request for Referendum?

No, only those producers who want to request that a referendum be conducted are expected to participate. Those who do not want to request that a referendum be held would not participate.

9. How is the outcome of the Request for Referendum determined?

If it is determined that at least 10 percent or 60,082 (not in excess of one-fifth of which may be producers in any one State) of the 600,813 soybean producers request a referendum, it will be conducted within 1 year from that determination. The largest number which is not in excess of one-fifth of the required number of valid signatures is 12,016. Thus, 12,016 is the maximum number of valid signatures from each State which would be allowed to count toward the total 60,082 needed to request a referendum.

Continued on the next page

Questions and Answers on Request for Referendum (Continued)

10. What is the Department of Agriculture's (USDA) role in the program?

USDA has two basic roles under the Act. The first role is to assist with the implementation of the Act and its various requirements (such as the producer Request for Referendum). It includes preparation and publication in the Federal Register of the Order, the rules and regulations, referendum rules, request for referendum rules, and other required documents. The second role is to oversee the programs and activities conducted by the Board to ensure that they comply with the law. USDA representatives attend Board and committee meetings, approve budgets, projects and contracts, and perform other functions to assist the Board in carrying out the law.

Summary of the Soybean Promotion and Research Act and Order

The Act

Congress enacted the Soybean Promotion, Research, and Consumer Information Act (Act) [7 U.S.C. 6301-6311] as part of the 1990 Farm Bill. The Act authorized the establishment of a national soybean promotion, research, and consumer information program that would be financed and operated by the soybean industry, with oversight by the Department of Agriculture (USDA). The program's goal is to strengthen the position of soybeans in the marketplace and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products.

The Order

The Department published a proposed Soybean Promotion and Research Order (Order) for comment in the Federal Register on February 25, 1991. Following review of written comments and comments received during a public hearing, the final Order became effective on July 9, 1991, when the Order was published in the Federal Register. Assessments began September 1, 1991.

Initial Referendum

As required by the Act, USDA conducted a referendum among soybean producers on February 9, 1994, to determine whether the program should continue. Of the 85,606 valid ballots cast, 53.8 percent of soybean producers voting favored the program.

The Poll

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

The Request for Referendum

The Act requires that the Secretary, 5 years after the conduct of the initial referendum and every 5 years thereafter, will provide soybean producers an opportunity to request a referendum on the Order. If the Secretary determines that at least 10 percent of the 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, no referendum would be conducted.

Continued on the next page

Summary of the Soybean Promotion and Research Order (Continued)

Administration

The program is administered by the United Soybean Board (Board), which has 62 members representing 28 States and 2 combined units. The initial Board was appointed by the Secretary, from soybean producers nominated by eligible organizations, for 1-, 2-, or 3-year terms. During each subsequent year, the Secretary appoints approximately one-third of all Board members for 3-year terms. The Board develops plans, projects, budgets and contracts to carry out a coordinated program for promotion, research, consumer information, and industry information.

Financing

The soybean promotion and research program is funded by a mandatory assessment of one-half of 1 percent of the net market price of soybeans. All producers marketing soybeans must pay the assessment. Assessments under this program are used to fund promotional and informational campaigns and to conduct research with the objective of improving and expanding the use of soybeans and soybean products.

Soybean Request for Referendum State Report

State FSA Office Request

Name of State:

Is the **State** submitting a negative report? **Yes or No** (Circle one)

- 1. Total number of producers registering to request a referendum _____
- 2. Number of eligible producers requesting a referendum _____
(Line 1 minus line 3 minus line 6)
- 3. Number of challenged producers deemed ineligible _____
- 4. Number of challenged producers deemed eligible _____
- 5. Number of challenged producers **(add lines 3 and 4)** _____
- 6. Number of invalid requests for a referendum _____
- 7. Number of counties reporting referendum voting _____
- 8. Number of counties with negative reports _____
- 9. Total number of counties in state: **(add lines 7 and 8)** _____

PREPARED BY: _____

Name Title Date

I hereby certify that I have reviewed the information on this form, and that it is true, complete and correct to the best of my knowledge and belief.

Name Title Date

State Proposed Request for a Referendum Calendar

Dates	Event
January 1, 1997, through November 16, 1999	Representative Period for eligibility
October 20, 1999, through November 16, 1999	Request for Referendum Period (4 weeks)
November 16, 1999	Mail-in requests must be postmarked; all other requests (facsimile, in-person) must be received in County FSA Office.
December 1, 1999 10 th work day after request for referendum period ends	Mail-in requests must be received in County FSA Office
December 2, 1999 11 th work day after request for request for referendum period ends	Last day to challenge person's eligibility in County FSA Office
Through December 2, 1999	List of soybean producers requesting a referendum (LS-51-2) posted in County FSA Office
December 7, 1999 14 th work day after request for referendum period ends	Last day for FSA determination of eligibility for those challenged
	Last day to notify challenged persons determined to be ineligible or eligible
December 10, 1999 3 work days after notification	Last day to appeal eligibility
December 13, 1999 18 th work day after request for referendum period ends	Determination of appeal
December 14, 1999 19 th work day after request for referendum period ends	Canvass/Count requests
December 16, 1999	Final date for County FSA Offices to send results to State FSA Offices
December 20, 1999	Final date for State FSA Offices to send results to Operations Review and Analysis Staff, WDC

Challenge of Eligibility Letters

If a producer's eligibility has been challenged, contact the voter personally and document the conversation or mail the appropriate letter in this Exhibit to the producer.

Form Letter A: Pre-Appeal Notice to Challenged Participant of Determination of Not Eligible

Dear [challenged participant's name]:

This is to inform you that your eligibility to participate in the Request for Referendum on the Soybean Promotion and Research Order has been challenged.

In order for us to determine if your request is valid, you must provide us with some form of documentation which may include at a minimum sales receipts. If we do not receive any documentation supporting your eligibility to request for a referendum, your request will not be counted in the Request for Referendum.

Form Letter B: Pre-Appeal Notice to Challenged Participant of Determination of Eligibility

Dear [challenged participant's name]:

This is to inform you that your eligibility to participate in the Request for Referendum on the Soybean Promotion, and Research Order has been challenged.

FSA has evaluated the challenge, and has determined that you meet the eligibility requirements. We are therefore including your request among those that will be counted in the Request for Referendum.

Continued on the next page

Challenge of Eligibility Letters (Continued)

Form Letter C: Post-Appeal Notice to Challenged Participant of Final Determination of Eligibility

Dear [challenged participant's name]:

This is to inform you that FSA has reviewed the documents that you provided in connection with the challenge to your eligibility to participate in the Request for Referendum on the Soybean Promotion and Research Order, and with your appeal of our initial determination that you were not eligible.

Based on your documentation, we have determined that you meet the eligibility requirements. We are therefore including your request among those that will be counted in the Request for Referendum.

Form Letter D: Post-Appeal Notice to Challenged Participant of Final Determination of Ineligibility

Dear [challenged voter's name]:

This is to inform you that FSA has reviewed the documents that you provided in connection with the challenge to your eligibility to participate in the Request for Referendum on the Soybean Promotion and Research Order, and with your appeal of our initial determination that you were not eligible.

We have determined that the documentation that you provided fails to establish that you meet the eligibility requirements. We are therefore not including your request among those that will be counted in the Request for Referendum.

Note: All form letters are to be signed by the CED or CED's designee.

USDA Sets Dates for Soybean Request for Referendum

Note: To be used by FSA

From October 20, 1999, through November 16, 1999, the Department of Agriculture will provide producers an opportunity to participate in the Request for Referendum on the Soybean Promotion and Research Order at local FSA offices. This request for referendum is being carried out under the authority of the Soybean Promotion, Research, and Consumer Information Act. The Order provides that the Secretary, 5 years after the conduct of the initial referendum which was held on February 9, 1994, will give soybean producers the opportunity to request a referendum on the order.

Producers may request a referendum by mail, facsimile, or in-person in the county FSA offices from October 20, 1999, through November 16, 1999. Individual producers and other producer entities will be provided the opportunity to request a referendum at the county FSA office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer owns or rents land. Mail in requests must be postmarked by November 16, 1999, and received in the county FSA office by December 1, 1999. All other requests made by facsimile or in person, must be received in the county FSA office by November 16, 1999.

To be eligible to request a referendum, you must have been a "person" engaged in the growing of soybeans in the United States who owns, or shares the ownership and risk of loss of such soybeans from January 1, 1997, through November 16, 1999. The term "person" means an individual or a legal entity (for example, a corporation, partnership, estate, etc.), or a group of individuals with a joint ownership interest in soybeans (for example, a family, a cooperative, an association, etc.).

In this Request for Referendum, each eligible "person" may request a referendum once. Spouses who jointly produce soybeans are considered to be a "family" (i.e., a "group of individuals"), and are not entitled to a separate request even in community property states. No one is authorized to request a referendum on behalf of an **individual** producer.

Questions about eligibility, challenges, the challenge resolution process, appeals of eligibility determinations, counting, reporting, and related topics should be directed to county FSA offices. Questions about Request for Referendum procedures (e.g., how to obtain ballot materials, where and when to request a referendum) should be directed to the county FSA office. Any other questions about the Request for Referendum should be referred to Ralph L. Tapp, at the Agricultural Marketing Service, Washington, DC., at 202-720-1115.

If the Secretary determines that at least 10 percent of the 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, no referendum would be conducted.

Copy of LS-51-1, Soybean Promotion and Research Order Request for Referendum

FORM APPROVED - OMB NO. 0581-0093

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

SOYBEAN PROMOTION AND RESEARCH ORDER
REQUEST FOR REFERENDUM

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 .08 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 programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (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 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call 202-720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

CERTIFICATION STATEMENT

I HEREBY CERTIFY that I am a soybean producer or the authorized representative of a soybean producer entity and that at some time during the period January 1, 1997, through the last day of the request for referendum period, I or the partnership corporation, estate, etc., that I am authorized to represent, engaged in the growing of soybeans in the United States and owned or shared the ownership and risk of loss of such soybeans; and I am requesting a referendum only once in the same capacity registered. I FURTHER CERTIFY that the information I am providing on this form is true, complete, and correct to the best of my knowledge and belief. Failure to provide complete information or sign this form will invalidate the request.

NAME OF INDIVIDUAL PRODUCER OR OTHER PRODUCER ENTITY (Print)

ADDRESS (Street, P.O. Box, or Route No., City, State, ZIP Code)

TELEPHONE NUMBER (Including Area Code)

COUNTY

IMPORTANT: Sign and date this form if you wish to request a referendum on the Soybean Promotion and Research Order.

SIGNATURE OF PRODUCER OR REPRESENTATIVE OF PRODUCER ENTITY

DATE

TITLE (If applicable)

LS-51-1 (08-99)

Continued on the next page

Copy of 7 CFR Part 1220, Soybean Promotion and Research Program: Procedures to Request a Referendum

[Federal Register: August 20, 1999 (Volume 64, Number 161)]
[Rules and Regulations]
[Page 45413-45419]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS-98-001]

Soybean Promotion and Research Program: Procedures to Request a Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures for soybean producers to request a referendum on the Soybean Promotion and Research Order (Order) as authorized under the Soybean Promotion, Research, and Consumer Information Act (Act). The Act provides that the Secretary, 5 years after the conduct of the initial referendum, shall give soybean producers the opportunity to request an additional referendum on the Order. Individual producers and other producer entities will be provided the opportunity to request a referendum during a specified period announced by the Secretary of Agriculture (Secretary), at the county Farm Service Agency (FSA) office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum will be provided at the county FSA office serving the county where the producer owns or rents land. Participation in the Request for Referendum is not mandatory. This final rule establishes the procedures for conducting the required Request for Referendum.

EFFECTIVE DATES: August 21, 1999.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP-0251; 14th and Independence Avenue, SW.; Washington, D.C. 20250-0251. Telephone number 202/720-1115.

Continued on the next page

Copy of 7 CFR Part 1220, Soybean Promotion and Research Program: Procedures to Request a Referendum (Continued)

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Proposed Rule--Soybean Promotion and Research Program: Procedures to Request a Referendum published September 4, 1998 (63 FR 47200); Proposed Rule--Soybean Promotion and Research Program: Request for Referendum published April 16, 1999 (64 FR 18831).

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

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

This final 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 Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Sec. 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 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.

Continued on the next page

Copy of 7 CFR Part 1220, Soybean Promotion and Research Program: Procedures to Request a Referendum (Continued)

Further, Sec. 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 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 of Agriculture (Department), there are 600,813 soybean producers who will 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.

The requirements set forth in this 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 will 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 will determine producer eligibility.

Continued on the next page

Copy of 7 CFR Part 1220, Soybean Promotion and Research Program: Procedures to Request a Referendum (Continued)

In compliance with 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 final rule have been previously approved by OMB and were assigned OMB control number 0581-0093. The information collection requirements in this final 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, or by facsimile from the county 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 in person, by mail, or by facsimile 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 and 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.

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Copy of 7 CFR Part 1220, Soybean Promotion and Research Program: Procedures to Request a Referendum (Continued)

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 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.

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, no referendum would be conducted.

Continued on the next page

Copy of 7 CFR Part 1220, Soybean Promotion and Research Program: Procedures to Request a Referendum (Continued)

For the purposes of the Request for Referendum, the Secretary will use the results of the recent AMS statistical survey of soybean producers obtained from an FSA soybean producer list. The survey showed that there are 600,813 soybean producers in the United States.

The Act provides that producers shall have an opportunity to request a referendum by mail or in person during a period established by the Secretary. Eligible persons must certify on an official form that they were engaged in the growing of soybeans during a representative period specified by the Secretary, and indicate that they favor the conduct of a referendum. The Request for Referendum period will be a 4-week period as determined by the Secretary and announced at a later date. The representative period for which a producer was engaged in the growing of soybeans and subject to the assessment will be January 1, 1997, through the last day of the Request for Referendum period. The date of the Request for Referendum period will be announced in a Notice published in the Federal Register and as specified in Sec. 1220.20. The Act also provides that a Request for Referendum may be made at county Cooperative State Research, Education, and Extension Service offices or county FSA offices. The regulations provide that soybean producers will request a referendum at county FSA offices. Providing producers an opportunity to Request a Referendum at FSA offices will give producers the greatest opportunity to request a referendum.

On September 4, 1998, the Department published in the Federal Register (63 FR 47200) a proposed rule that set forth procedures to be followed in conducting the Request for Referendum with comments due in the Department by October 5, 1998. 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. It also proposed that the Request for Referendum be conducted at the county FSA offices so FSA employees could assist AMS by determining eligibility, counting ballots, and reporting results.

The Department received 12 comments in response to the September 4, 1998, proposed rule. All comments received were from State and national soybean organizations. Ten 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. Of the 12 comments received, 6 comments expressed the belief that the 381,000 soybean farms reported by the 1992 Census of Agriculture (Census) and initially

Continued on the next page

Copy of 7 CFR Part 1220, Soybean Promotion and Research Program: Procedures to Request a Referendum (Continued)

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 the Department 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. Accordingly, the Department contracted with an independent surveyor to conduct a survey of soybean producers. The Department used an FSA list of approximately 970,000 producers who produced soybeans, or who produced forage or hay which may have included soybeans during crop years 1995-97. The Department developed a survey and the surveyor contacted a statistically sample of 2,401 producers selected from the list of 970,000 producers to determine the number of individuals and firms which meet the definition of a soybean producer contained in the Act. Those persons interviewed by the surveyor were asked to indicate whether they were a soybean producer only after listening to the definition of a soybean producer as set forth in Sec. 1967 of the Act which was read by the surveyor. 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, the Department received the results of the soybean producer survey. Based on the results of the survey, the sample of soybean producers indicated 600,813 United States soybean producers would be eligible to participate in the Request for Referendum. On April 16, 1999, the Department published in the Federal Register (64 FR 18831) a proposal to change the number of eligible soybean producers from the 381,000 soybean producers published in the September 4, 1999, proposed rule (63 FR 47200) to 600,813 soybean producers based on the results of the Department's statistical survey. Comments were due in the Department by May 17, 1999.

The Department received nine written comments on the amended proposed rule primarily from State and national soybean organizations. Seven comments were filed on time and two comments were filed after the comment period closed. The late comments generally expressed the same view as the timely comments.

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Copy of 7 CFR Part 1220, Soybean Promotion and Research Program: Procedures to Request a Referendum (Continued)

Of the seven comments filed on time, six comments supported the Department's revised estimate of the number of soybean producers eligible to participate in the Request for Referendum as published in the April 16, 1999, proposed rule. The commenters generally expressed the view that basing the number of U.S. soybean producers on the number of "soybean farms" as reported in the Census understated the number of "soybean producers" eligible to participate in the request for referendum. They believed that the revised number based on the survey was much more consistent with the Act's definition of a soybean producer which is "any person engaged in growing soybeans in the U.S. who owns or who shares the ownership and risk of loss of such soybeans." They pointed out that given the structure of many farming operations, more than one producer could be connected to a single farm. One comment did not support the change in the number of eligible producers. The commenter believed the difference between the Census number for 1997 of 354,692 and the statistically derived number of 600,813 was too large. The commenter also believed that an exact number could be obtained from the various State checkoff offices. However, the types of records maintained would not provide appropriate information.

Based on the comments received and all available information including the Department's soybean producer survey, 600,813 soybean producers will be used as the number of producers eligible to participate in the Request for Referendum. A soybean referendum will be conducted if requested by 10 percent of the total number of eligible 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.

The other substantive changes suggested by commenters on the September 4, 1998, proposed rule and not addressed in the April 16, 1999, proposed rule are discussed below. For the reader's convenience, the discussion is organized by the same topic headings and in the same order that the topics appear in the proposed rule.

Section 1220.33 Time and Place for Requesting a Referendum

Two commenters suggested that the 4 week Request for Referendum was too long. One of the commenters believed that the in person Request for Referendum period as proposed by the Department should be reduced to a 2-week period and that a 2-week period would provide farmers with an adequate opportunity to request a referendum while reducing the potential for confusion during the administration of the request process. The other commenter suggested that the Request for Referendum

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Copy of 7 CFR Part 1220, Soybean Promotion and Research Program: Procedures to Request a Referendum (Continued)

period should be conducted in two stages. In the first stage, FSA should have the ability to respond to requests for a form either by facsimile and/or mail 2 weeks prior to the beginning of the in person request period. This would allow farmers the opportunity to submit by mail or by facsimile a form in a timely fashion and would give FSA plenty of opportunity to provide the forms through the mail to the person requesting the form. The person requesting the form would have a sufficient amount of time to drop off the form during a visit to the FSA office or mail the form back to the FSA office. Secondly, the commenter believed the in person request period should be no longer than 2 weeks. The Department has determined that the Request for Referendum period will be 4 weeks to ensure that those producers who wish to participate in the Request for Referendum will have ample opportunity to do so. Furthermore, the Department believes a 2-week Request for Referendum period is too short to ensure that all eligible producers have sufficient time to request a referendum, particularly if Form LS-51-1 is requested by mail. Finally, the Department believes that the two-stage Request for Referendum would unnecessarily complicate the process which could lead to confusion. Accordingly these suggestions are not adopted.

Section 1220.36 Certification and Request Procedure.

Two commenters suggested that obtaining Form LS-51-1--Producer Request for Referendum--by telephone be eliminated because they believed permitting participation by telephone would pose significant administrative problems during the Request for Referendum. The commenters also believe that mistakes would be made in obtaining information by telephone and that in person or written requests (including request by fax), assures greater accuracy. The commenters further believed that having a written record of request form solicitations would enable county FSA offices to better address complaints from producers claiming that they did not receive Form LS-51-1 as requested. The Department believes this suggestion has merit. Since there will be a 4-week Request for Referendum period, producers will have ample time to request and receive Form LS-51-1 in person, by mail, or by facsimile. Accordingly, Form LS-51-1 will not be available by telephone request.

Section 1220.42 FSA County Office Report; Section 1220.43 FSA State Office; Report; and Section 1220.44 Reporting Results.

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Copy of 7 CFR Part 1220, Soybean Promotion and Research Program: Procedures to Request a Referendum (Continued)

One commenter suggested that the county FSA offices be required to submit reports to State FSA offices no later than 10 business days following the counting of the requests; State FSA offices be required to submit reports to the Administrator, FSA, no later than 5 business days following their receipt of FSA county office reports; and the Administrator, FSA, be required to submit State reports to the Administrator, AMS, no later than 5 business days following receipt of the State reports. The Department concurs that both county and State FSA reports should be submitted to the Administrator, FSA, and subsequently to the Administrator, AMS, in a timely manner. However, the Department does not believe that such timeframes for submitting reports on the results of the Request for Referendum should be included in the rule, because it would not allow the necessary flexibility to adjust reporting time for events beyond the control of the reporting office. Timely submissions will be stressed in the instructions provided to county and State FSA offices by FSA and AMS headquarters. Accordingly, this suggestion is not adopted.

Additional Comments

One commenter recommended that the Request for Referendum period begin on Monday, March 1, 1999, and continue through March 29, 1999. At the time comments were received and reviewed, the Department concurred that the Request for Referendum be conducted on or about the dates suggested. However, because of the delay in establishing the number of producers eligible to participate in the Request for Referendum, a later period must be established. The Department will conduct the Request for Referendum at the earliest practicable date following the effective date of this final rule.

The final rule sets forth procedures for producers to request a referendum as authorized under the Act, including definitions, eligibility, certification and request procedures, reporting results, and disposition of the forms and records. FSA will coordinate State and county FSA roles in conducting the Request for Referendum by (1) Determining producer eligibility, (2) canvassing and counting requests, and (3) reporting the results.

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Copy of 7 CFR Part 1220, Soybean Promotion and Research Program: Procedures to Request a Referendum (Continued)

Effective Date

Pursuant to 5 U.S.C. 533, it is found and determined that good cause exists for not postponing the effective date of the action until 30 days after publication of this rule in the Federal Register. Such action will assist in timely implementation of this rule consistent with the provisions of the Act. This rule establishes the procedures for conducting a request for referendum required by the Act and should become effective as soon as possible in order to begin preparations for the Request for Referendum.

List of Subjects in 7 CFR Part 1220

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

For the reasons set forth in the preamble, title 7 of the CFR part 1220 is 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.

2. In part 1220, subpart F is added to read as follows:

Subpart F--Procedures to Request a Referendum

Definitions

Sec.

1220.10 Act.

1220.11 Administrator, AMS.

1220.12 Administrator, FSA.

1220.13 Department.

1220.14 Farm Service Agency.

1220.15 Farm Service Agency County Committee.

1220.16 Farm Service Agency County Executive Director.

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- 1220.17 Order.
- 1220.18 Person.
- 1220.19 Producer.
- 1220.20 Public notice.
- 1220.21 Representative period.
- 1220.22 Secretary.
- 1220.23 Soybeans.
- 1220.24 State and United States.

Procedures

- 1220.30 General.
- 1220.31 Supervision of the process for requesting a referendum.
- 1220.32 Eligibility.
- 1220.33 Time and place for requesting a referendum.
- 1220.34 Facilities.
- 1220.35 Certification and request form.
- 1220.36 Certification and request procedure.
- 1220.37 List of producers requesting a referendum.
- 1220.38 Challenge of eligibility.
- 1220.39 Canvassing.
- 1220.40 Counting requests.
- 1220.41 Public review.
- 1220.42 FSA county office report.
- 1220.43 FSA State office report.
- 1220.44 Reporting results.
- 1220.45 Disposition of records.
- 1220.46 Instructions and forms.

Subpart F--Procedures to Request a Referendum

Definitions

Sec. 1220.10 Act.

The term Act means the Soybean, Promotion, Research, and Consumer Information Act set forth in title XIX, subtitle E, of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101-624), and any amendments thereto.

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Copy of 7 CFR Part 1220, Soybean Promotion and Research Program: Procedures to Request a Referendum (Continued)

Sec. 1220.11 Administrator, AMS.

The term Administrator, AMS, means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

Sec. 1220.12 Administrator, FSA.

The term Administrator, FSA, means the Administrator, of the Farm Service Agency, or any officer or employee of the Department to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

Sec. 1220.13 Department.

The term Department means the United States Department of Agriculture.

Sec. 1220.14 Farm Service Agency.

The term Farm Service Agency, also referred to as "FSA," means the Farm Service Agency of the Department.

Sec. 1220.15 Farm Service Agency County Committee.

The term Farm Service Agency County Committee, also referred to as "FSA County Committee or COC," means the group of persons within a county who are elected to act as the

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Farm Service Agency County Committee.

Sec. 1220.16 Farm Service Agency County Executive Director.

The term Farm Service Agency County Executive Director, also referred to as "CED," means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and to be responsible for the day-to-day operation of the FSA county office, or the person acting in such capacity.

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Copy of 7 CFR Part 1220, Soybean Promotion and Research Program: Procedures to Request a Referendum (Continued)

Sec. 1220.17 Order.

The term Order means the Soybean Promotion and Research Order.

Sec. 1220.18 Person.

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

Sec. 1220.19 Producer.

The term Producer means 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.

Sec. 1220.20 Public notice.

The term Public Notice means a notice published in the Federal Register, not later than 60 days prior to the last day of the Request for Referendum period that provides information regarding the Request for Referendum period. Such notification shall include, but not be limited to, explanation of producers' rights; procedures to request a referendum, the purpose, dates of the Request for Referendum period, location for conducting the Request for Referendum, and eligibility requirements. Additionally, the Board is required to provide producers, in writing, this same information during that same time period. Other pertinent information shall also be provided, without advertising expense, through press releases by State and county FSA offices and other appropriate Government offices, by means of newspapers, electronic media, county newsletter, and the like.

Sec. 1220.21 Representative period.

The term Representative period means the period designated by the Secretary pursuant to Section 1970 of the Act.

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Copy of 7 CFR Part 1220, Soybean Promotion and Research Program: Procedures to Request a Referendum (Continued)

Sec. 1220.22 Secretary.

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

Sec. 1220.23 Soybeans.

The term Soybeans means all varieties of glycine max or glycine soja.

Sec. 1220.24 State and United States.

The terms State and United States include the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

Procedures

Sec. 1220.30 General.

An opportunity to request a referendum shall be provided to U.S. soybean producers to determine whether eligible producers favor the conduct of a referendum and the Request for Referendum shall be carried out in accordance with this subpart.

(a) The opportunity to request a referendum shall be provided at the county FSA offices.

(b) If the Secretary determines, based on results of the Request for Referendum, that no less than 10 percent (not in excess of one-fifth of which may be producers in any one State) of all producers have requested a referendum on the Order, a referendum would be held within 1 year of that determination.

(c) If the Secretary determines, based on the results of the Request for Referendum, that the requirements in paragraph (b) of this section were not met, a referendum would not be conducted.

(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.

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Sec. 1220.31 Supervision of the process for requesting a referendum.

The Administrator, AMS, shall be responsible for supervising the process of permitting producers to request a referendum in accordance with this subpart.

Sec. 1220.32 Eligibility.

(a) Eligible producers. Each person who was a producer during the representative period is provided the opportunity to request a referendum. Each producer entity is entitled to only one request.

(b) Proxy registration. Proxy registration is not authorized except that an officer or employee of a corporate producer, or any guardian, administrator, executor, or trustee of a producer's estate, or an authorized representative of any eligible producer entity (other than an individual producer), such as a corporation or partnership, may request a referendum on behalf of that entity. Any individual who requests a referendum on behalf of any producer entity, shall certify that he/she is authorized by such entity to take such action.

(c) Joint and group interest. A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation engaged in the production of soybeans as a producer entity shall be entitled to make only one request for a referendum; provided, however, that any individual member of a group who is an eligible producer separate from the group may request a referendum separately.

Sec. 1220.33 Time and place for requesting a referendum.

The opportunity to request a referendum shall be provided during a 4-week period beginning and ending on a date determined by the Secretary. Eligible persons shall have the opportunity to request a referendum by following the procedures in Sec. 1220.36 during the normal business hours of each county FSA office.

Sec. 1220.34 Facilities

Each county FSA office shall provide adequate facilities and space to permit producers to complete Form LS-51-1.

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Copy of 7 CFR Part 1220, Soybean Promotion and Research Program: Procedures to Request a Referendum (Continued)

Sec. 1220.35 Certification and request form.

Form LS-51-1 shall be used to request a referendum and certify producer eligibility. The form does not require a "yes" or "no." Individual producers and representatives of other producer entities should read the form carefully. By completing and signing the form, the individual simultaneously registers, certifies eligibility and requests that a referendum be conducted.

Sec. 1220.36 Certification and request procedure.

(a) To request that a referendum be conducted, each eligible producer shall, during the Request for Referendum period, be provided the opportunity to request a referendum during a specified period announced by the Secretary, at the county FSA office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer owns or rents land. Each eligible producer shall be required to complete Form LS-51-1 in its entirety and sign it. The producer must legibly print his/her name and, if applicable, the producer entity represented, address, county, and telephone number. The producer must read the certification statement on Form LS-51-1 and sign it certifying that he/she or the producer entity represented was a producer of soybeans during the representative period and is requesting a referendum. Only a completed and signed Form LS-51-1 shall be considered a valid request for a referendum.

(b) To request a referendum eligible producers may obtain Form LS-51-1 in person, by mail, or by facsimile during the Request for Referendum period from the county FSA office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer owns or rents land. Producers or producer entities may return Form LS-51-1 in person, by mail, or facsimile. Form's LS-51-1 returned in person or by facsimile, must be received in the appropriate county FSA office no later than the last business day of the Request for Referendum period to be considered a valid request. However, Form's LS-51-1 mailed to the county FSA office must be postmarked no later than the last business day of the Request for Referendum period and be received in the county FSA office no later than 10 business days after the last business day of the Request for Referendum period to be considered a valid request for a referendum.

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(c) Eligible participants who obtain form LS-51-1 in person at the appropriate county office may complete, and return by hand the form the same day.

Sec. 1220.37 List of producers requesting a referendum.

(a) The county FSA personnel shall enter on the "List of Soybean Producers Requesting a Referendum" form (Form LS-51-2), the following information for each returned Form LS-51-1: name of individual soybean producer or other producer entity, name of producer entity representative, if applicable, postmarked date of a mailed Form LS-51-1 and the date it was received in the county 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, the date Form LS-51-1 was received by facsimile or in person in the county 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. For any challenges of a producer's or producer entities' eligibility, the county FSA personnel would make a "check mark" in the space provided on Form LS-51-2 indicating a producer's or producer entities' eligibility has been challenged. After the challenge is resolved "eligible" or "ineligible" would be entered in the space provided on Form LS-51-2.

(b) County FSA offices shall, at all times, maintain control of the master (original) copy of Forms LS-51-1 and LS-51-2. A copy of each Form LS-51-2 shall be posted and made available for public inspection each day beginning on the first business day of the Request for Referendum period through the 11th business day following the last business day of the Request for Referendum period. An updated copy of Form LS-51-2 shall be posted in the county FSA office during normal business office hours in a conspicuous location.

Sec. 1220.38 Challenge of eligibility.

(a) Who may challenge. Any person may challenge a producer's or producer entity's eligibility to request a referendum. Each challenge must be in writing include the full name of the individual or other producer entity being challenged; be made on a separate piece of paper; and be signed by the challenger. The Secretary may issue other guidelines as the Secretary deems necessary.

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(b) Challenge period. A challenge of a person's eligibility to request a referendum may be made on any business day during the 4-week Request for Referendum period through the 11th business day after the Request for Referendum period.

(c) Challenged names. Producers whose eligibility is challenged shall be so noted with a "checkmark" in the space provided on Form LS-51-2.

(d) Determination of challenges. The FSA County Committee (COC) or designee, acting on behalf of the Administrator, AMS, shall make a determination concerning the challenge and shall notify challenged producers as soon as practicable, but no later than the 14th business day after the end of the request for referendum period. If the COC or designee is unable to determine whether a person was a producer during the representative period, the COC or designee may require the person challenged to submit records such as sales documents or similar documents to verify producer status during the representative period.

(e) Appeal. A person declared to be ineligible by the COC or designee, acting on behalf of the Administrator, AMS, may file an appeal at the county FSA office within 3 business days after notification by the county FSA office of its decision. Such person may be required to provide documentation such as sales documents or similar documents in order to demonstrate eligibility. An appeal shall be determined by the COC or designee as soon as practicable, but in all cases not later than the 18th business day after the last day of the Request for Referendum period. The determination of the COC or designee on an appeal shall be final.

(f) Resolved challenges. A challenge shall be determined to have been resolved if the determination of the COC or designee, acting on behalf of the Administrator, AMS, is not appealed within the time allowed for appeal or there has been a determination by the COC or designee after an appeal. After the challenge has been resolved, the county FSA office shall write either "eligible" or "ineligible" in the space provided on Form LS-51-2.

Sec. 1220.39 Canvassing

Canvassing of Forms LS-51-1 and LS-51-2 shall take place as soon as possible after the opening of county FSA offices on the 19th business day following the Request for Referendum period. Such canvassing shall be under the supervision of the CED or designee, acting on behalf of the Administrator, AMS, who shall make a determination as to the number of valid or invalid requests for a referendum.

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(a) Invalid requests for a referendum. An invalid request for a referendum may include the following:

- (1) Form LS-51-1 is not signed and/or all required information has not been provided;
- (2) Form LS-51-1 returned in person or by facsimile was not received by the last business day of the Request for Referendum period;
- (3) Form LS-51-1 returned by mail was not postmarked by the last business day of the Request for Referendum period;
- (4) Form LS-51-1 returned by mail was not received in the county FSA office by the 10th business day after the Request for Referendum period;
- (5) Form LS-51-1 is mutilated or marked in such a way that any required information on the form is illegible; and/or
- (6) Form LS-51-1 not returned to the appropriate county FSA office.

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(b) Any Form LS-51-1 determined invalid shall not be considered as a request for a referendum.

Sec. 1220.40 Counting requests.

The requests for a referendum shall be counted by the COC or designee on the 19th business day after the last business day of the Request for Referendum period. Requests for a referendum shall be counted as follows:

- (a) Total number of producers registering to request a referendum;
- (b) Number of eligible producers requesting a referendum;
- (c) Number of challenged producers deemed ineligible;
- (d) Number of challenged producers; and
- (e) Number of invalid requests for a referendum.

Sec. 1220.41 Public review.

The public may witness the counting from an area designated by the FSA County Executive Director (CED) or designee, acting on behalf of the Administrator, AMS, but may not interfere with the process.

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Sec. 1220.42 FSA county office report.

The county FSA office report shall be certified as accurate and complete by the CED or designee, acting on behalf of the Administrator, AMS. Such report shall include, the information listed in Secs. 1220.39 and 1220.40. The county FSA office shall notify the FSA State office of the results of the Request for Referendum on a form provided by the Administrator, FSA. Each county FSA office shall transmit the results in its county to the FSA State office. The results in each county may be made available to the public upon notification by the Administrator, FSA, that the final results have been released by the Secretary. A copy of the report shall be posted for 30 days following the date of notification by the Administrator, FSA, in the county FSA office in a conspicuous place accessible to the public. One copy shall be kept on file in the county FSA office for a period of at least 12 months after notification by FSA that the final results have been released by the Secretary.

Sec. 1220.43 FSA State office report.

Each FSA State office shall transmit to the Administrator, FSA, a report summarizing the data contained in each of the reports from the county FSA office on a State report form provided by the Administrator, FSA. The State FSA office shall maintain one copy of the summary where it shall be available for public inspection upon request for a period of not less than 12 months after the results have been released.

Sec. 1220.44 Reporting results.

(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. The Department will issue an official press release announcing the results of the Request for Referendum and publish the same results in the Federal Register. 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 2627 South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems necessary, a State report or county report shall be reexamined and checked by such persons who may be designated by the Secretary.

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Sec. 1220.45 Disposition of records.

Forms LS-51-1 and LS-51-2 and county reports shall be placed in sealed containers under the supervision of the CED or designee, acting on behalf of the Administrator, AMS, and such container shall be marked with "Request for Soybean Referendum." Such records shall remain in the secured custody of the CED or designee for a period of not less than 12 months after the date of notification by the Administrator, FSA, that the final results have been announced by the Secretary. If the county FSA office receives no notice to the contrary from the Administrator, FSA, by the end of the 12 month period, the CED or designee shall destroy the records.

Sec. 1220.46 Instructions and forms.

The Administrator, AMS, is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart.

Dated: August 17, 1999.

Barry L. Carpenter,
Deputy Administrator, Livestock and Seed Program.
[FR Doc. 99-21672 Filed 8-19-99; 8:45 am]

Request for Soybean Referendum

Eligibility

To be eligible to participate in the Request for Referendum, you must have been a “person,” as that term is defined below, engaged in the growing of soybeans in the United States who owns, or shares the ownership and risk of loss of such soybeans

In this Request for Referendum, the term “**person**” means any of the following:

- an individual
- a legal entity (for example, a **corporation, partnership, estate**, etc.)
- **a group of individuals** with a **joint ownership interest in the soybeans** (for example, a **family**, a **cooperative**, an **association**, etc.).

Note: In the Request for Referendum, the term “**ownership**” means **having full control of all buying, selling and production decisions**. This definition does not apply to producers selling through marketing cooperatives).

In this Request for Referendum, each eligible “**person**” has **1 vote**.

Following are examples of an eligible “**person**” entitled to cast **1 vote**:

- a family that owns soybeans
- a partnership that owns soybeans
- an individual member of any “group of individuals” (including a family), who has **independent ownership** of soybeans separate from the rest of the group.

Note: In this Request for Referendum, spouses who jointly own soybeans are considered to be a “**family**” (i.e., a “**group of individuals**”), and are not entitled to a separate vote even in community property states.

United States Department Of Agriculture - Agricultural Marketing Service - August 1999

How to Request a Soybean Referendum

- Soybean producers may participate in the Request for Referendum either in person, in writing, or by facsimile beginning on October 20, 1999, through November 16, 1999.
- Any person (individual or other entity) who during the period January 1, 1997, through November 16, 1999, has been engaged in the growing of soybeans in the United States and who owns or shares the ownership and risk of loss of, such soybeans is eligible to participate in the Request for Referendum.
- Request for Referendum forms will be available only from the county Farm Service Agency (FSA) office.
- If a request is made by facsimile or in writing, the FSA agent or designee will provide form LS-51-1 either by mail or facsimile. If a request is made in person, the form may be completed at that time.
- Each producer (i.e., each individual or other entity) may request a referendum **only once**.
- Individual producers and other producer entities would be provided the opportunity to request a referendum at the county FSA office where FSA maintains and processes the producer's administrative farm records.
- For the producer not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer owns or rents land.
- Mail in requests must be postmarked by November 16, 1999 and received in the county FSA office by December 1, 1999. All other requests by facsimile or in person must be received in the county FSA office by November 16, 1999.

United States Department of Agriculture - Agricultural Marketing Service - August 1999

Request for Soybean Referendum

If your eligibility to request a referendum as a producer or as a representative of a producer of soybeans is challenged, any 1 of the following may be acceptable proof of *ownership* of soybeans or soybean products:

Producer:

- Bill of sale
- Tax records
- Production records
- Insurance records.

****In the absence of any of the records listed above, the Farm Service Agency may accept as evidence of ownership a signed statement by an individual who can be reasonably expected to have knowledge of the challenged person's eligibility, stating facts showing that the person meets the eligibility requirements.****

United States Department of Agriculture - Agricultural Marketing Service - August 1999

Transmittal Letter from County FSA Office to Soybean Producer Requesting LS-51-1

County Office Letterhead

Dear Soybean Producer:

As requested on _____, enclosed is a copy of the LS-51-1 for participation in the Soybean Request For a Referendum.

Please return to the County Office listed below:

(Name of County FSA Office)

Address of County FSA Office)

-

(City) (State) (ZIP)

FAX

If you have any questions, please contact this office on _____.
(County FSA Telephone No.)

Sincerely,

County Executive Director