

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

**Assisting With the Upland Cotton Referendum**

**Approved by:** Administrator



**1 Overview**

**A Background**

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

AMS conducted a formal rulemaking hearing before an Administrative Law Judge on the proposed amendments to the Cotton Order on December 5, 2008, in Washington, DC. USDA issued the Secretary’s Decision and Referendum Order on October 5, 2009. The decision proposes amendments to the Cotton Order and provides upland cotton producers and importers with the opportunity to vote in a referendum to determine if they favor the changes.

According to the Cotton Act:

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

The referendum rules and procedures were published as a proposed rule with a request for comments published in FR on June 4, 2009. The final rule was published on the same day as the Secretary’s Decision and Referendum Order, October 5, 2009.

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

## Notice AO-1454

### 1 Overview (Continued)

#### A Background (Continued)

The Cotton Act, Section:

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

**Important:** As in past referenda and signups, this referendum may be audited, contested in court, or both. Accordingly, it is extremely important that State and County Offices follow this notice timely and accurately.

#### B Purpose

This notice:

- provides instructions to State and County Offices about FSA’s responsibilities for the Cotton Research and Promotion Program referendum
- obsoletes Notice AO-1453
- clarifies the ballot box and envelopes and supporting documentation requirements.

#### C State and County Office Action

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

**Note:** AMS provided referendum instructions. Also see Referendum Procedures as published in FR October 5, 2009 (74 FR 51069).

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

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

## Notice AO-1454

### 1 Overview (Continued)

#### D Contact

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

**Important:** The FFAS Employee Forms/Publications Online Website is unavailable until further notice. In the interim, Exhibits 2 through 7 will be e-mailed to State Offices directly from Rick Pinkston. State Offices shall forward Exhibits 2 through 7 to County Offices.

### 2 Software to Support the Referendum

#### A Background

County Release No. 675 contains software to comply with 7 CFR 1205.204 (b).

#### B Identifying Producers With Share of Cotton in 2008

The software will:

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

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

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

**Note:** Follow instructions in Exhibit 1 on eligibility. All producers wanting to participate **must** still provide supporting documentation with their ballot to the FSA office.

## 2 Software to Support the Referendum (Continued)

### C Printing List of Producers

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

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

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

### D Printing List of Multi-County Producers

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

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

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

### E Running the Software

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

- on Menu FAX07001, ENTER "9", "Common Provisions" and PRESS "Enter"
- ENTER "UPCNR9,QRPRADJ1" on the command line and PRESS "Enter".

## 3 Maintaining FSA's Impartiality

### A State and County Office Action

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

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

## AMS Instructions for Conducting the Referendum

**Cotton Research and Promotion Program**

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

**1 Overview****A Background**

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

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

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

**B Responsibilities**

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

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

- providing a ballot box, envelope (if necessary), and accepting referendum ballots from cotton producers
- determining eligibility of cotton producers to file a request
- determining and reporting referendum results.

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

**AMS Instructions for Conducting the Referendum (Continued)****C Purpose**

The purposes of these instructions are to:

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

**2 Referendum Period****A Significance of the Referendum Period**

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

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

**B Time of Referendum Period**

The referendum period shall:

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

## AMS Instructions for Conducting the Referendum (Continued)

**3 Eligibility****A Eligibility Requirements**

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

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

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

## AMS Instructions for Conducting the Referendum (Continued)

**B Determining Eligibility**

- The FSA County Office serving the county in which the producer's farm is located shall be the producer's polling place. For a person not participating in an FSA program, the opportunity to vote in a referendum will be provided at the FSA County Office serving the county where the person owns or rents land. If a person's operation is located in several counties, the voting office shall be determined based on the major portion of the operation's location.
- In accordance with 7 CFR 1205.204(b), FSA County Offices are instructed to prepare lists of all known, eligible upland cotton producers in each county that it served during crop year 2008.
- Each person engaged in the production of upland cotton during the representative period may participate in the referendum.
- Eligible producers must date and sign their name on the FSA County Office In-Office Referendum Sheet (Exhibit 2).

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

- Eligible producers requesting to cast a ballot by mail must request and complete the referendum ballot CN-100 (Exhibit 4), and send it back to their County Office along with supporting documentation, such as a sales receipt or remittance form.
- Under no circumstance should any person wishing to cast a ballot in the referendum be refused the opportunity to do so.
- For a person to vote, such person must provide an AMS form CN-100 ballot (Exhibit 4) and supporting documentation, such as a sales receipt or remittance form, that demonstrates that the person was a cotton producer during the representative period of crop year 2008 (January 1 through December 31, 2008).
- If a producer does not have an envelope in which to cast their ballot and supporting documentation, FSA may provide one to the producer. The producer shall fold, place their ballot in the envelope, seal it, and place it in the ballot box.
- Producers may request to vote by mail.
- Requests for absentee referendum packages may be made by mail, FAX, or telephone by the producer or on the producer's behalf. In this case, the absentee referendum package shall be mailed directly to the producer at the address provided. The ballot may also be obtained by the Internet at [www.ams.usda.gov/Cotton](http://www.ams.usda.gov/Cotton).
- Requests must be for only 1 absentee package.

**Notes:** A list of names is not an individual request.

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

## AMS Instructions for Conducting the Referendum (Continued)

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

**Note:** Exhibit 3 is not available to the public. Do not provide copies for any reason to anyone.
  - list the producer's name and date received in Exhibit 3
  - send the producer an absentee referendum package containing a copy of the referendum ballot (Exhibit 4) and a letter of explanation of the referendum period (Exhibit 5), requiring the producer to return the following documents to be received by the FSA County Office by COB November 10, 2009
  - a copy of supporting documentation, such as a sales receipt or remittance form, must accompany the returned ballot.
 

**Note:** Sales documents are required even though the producer is shown on the county list.
  - a completed and signed referendum letter (Exhibit 4).
- When a completed referendum letter (Exhibit 4) is returned, enter the date received on Exhibit 3, "Remarks".
- Enter "Ineligible" on Exhibit 3, "Remarks" if the:
  - producer failed to submit sales evidence
  - referendum letter was not received by the County Office by November 10, 2009
  - referendum letter was not completed properly.

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

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

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

**AMS Instructions for Conducting the Referendum (Continued)****4 Counting Requests**

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

The FSA County Office shall determine the number of:

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

**5 Reports and Records****A Results of the Referendum**

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

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

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

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

**B State FSA Office Reporting**

State FSA Offices shall:

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

In-Office Referendum Sheet

State: _____			
In-Office Referendum Sheet			
_____ County FSA Office Referendum Sheet		Page _____	of _____
Date	Print Name	Signature	Remarks
1.			
2.			
3.			
4.			
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25.			

Register of Absentee Referendum Requests Sheet

State: _____			
Register of Absentee Referendum Requests			
_____ County FSA Office Referendum Sheet Page _____ of _____			
Date Received	Print Name	Date Returned	Remarks
1.			
2.			
3.			
4.			
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25.			



**AMS Form CN-100, Official Referendum Ballot Cotton Research and Promotion Order  
(Continued)**

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**BURDEN AND NONDISCRIMINATION STATEMENTS**

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

*The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.*

*CN-100, Attachment B*

**Example Letter of Explanation of the Referendum Period**

Dear Producer:

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

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

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

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

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

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

Sincerely,

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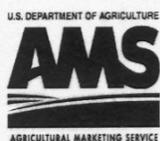
County Executive Director

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

State and County Office FSA Transmittal of Results Sheet

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

## AMS Program Announcement



# PROGRAM ANNOUNCEMENT

## AGRICULTURAL MARKETING SERVICE

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

AMS No. 177-09

Sam Jones (202)720-8998  
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### USDA SETS REFERENDUM FOR PROPOSED AMENDMENTS TO COTTON RESEARCH AND PROMOTION ORDER

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

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

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

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

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

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