

**List of Subjects in 7 CFR Part 966**

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

**PART 966—TOMATOES GROWN IN FLORIDA**

1. The authority citation for 7 CFR part 966 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 966.323 is amended by revising the last sentence of paragraph (d)(1) to read as follows:

**§ 966.323 Handling regulation.**

\* \* \* \* \*

(d) *Exemption.* (1) \* \* \* Producer field-packed tomatoes must meet all of the requirements of this section except for the following: the container net weight requirements specified in paragraph (a)(3)(i) of this section; the requirement that each container or lid shall be marked to indicate the designated net weight specified in paragraph (a)(3)(ii) of this section; the requirement that all containers must be packed at registered handler facilities as specified in paragraph (a)(3)(ii) of this section; the requirement that such tomatoes designated as size 6 × 6 must meet the maximum diameter requirement specified in paragraph (a)(2)(i) of this section and the labeling requirement specified in paragraph (a)(2)(iii) of this section: *Provided*, That “6 × 6 and larger” is used to indicate the listed size designation on containers.

\* \* \* \* \*

Dated: August 17, 1999.

**Eric M. Forman,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–21674 Filed 8–19–99; 8:45 am]

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**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.

**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 § 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.

Further, § 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exception in the Act concerns assessments collected by the Qualified State Soybean Boards (QSSBs). The exception provides that to ensure adequate funding of the operations of QSSBs under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referendums conducted during specified periods by a State relating to the continuation or termination of a QSSB or State soybean assessment.

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

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.

#### 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.

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 § 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

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 § 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.

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 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.*

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.

#### 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.
- 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

##### § 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.

##### § 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.

##### § 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.

##### § 1220.13 Department.

The term *Department* means the United States Department of Agriculture.

##### § 1220.14 Farm Service Agency.

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

##### § 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

Farm Service Agency County Committee.

**§ 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.

**§ 1220.17 Order.**

The term *Order* means the Soybean Promotion and Research Order.

**§ 1220.18 Person.**

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

**§ 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.

**§ 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.

**§ 1220.21 Representative period.**

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

**§ 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.

**§ 1220.23 Soybeans.**

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

**§ 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**

**§ 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.

**§ 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.

**§ 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.

**§ 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 § 1220.36 during the normal business hours of each county FSA office.

**§ 1220.34 Facilities**

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

**§ 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.

**§ 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.

(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.

#### **§ 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.

#### **§ 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.

(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.

#### **§ 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.

(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.

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

**§ 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.

**§ 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.

**§ 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 §§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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]

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 113**

[Docket No. 97-103-2]

**Viruses, Serums, Toxins, and Analogous Products; Update of Incorporation by Reference for Rabies Vaccine**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations pertaining to the standard requirements for rabies vaccine, killed virus, so that they incorporate the latest edition of a guide to laboratory techniques. The regulations currently refer to the previous edition of that guide, which was published in 1973. This action will ensure that the latest edition of the guide is incorporated by reference and used in conducting potency tests during the production of inactivated (killed) veterinary rabies vaccines.

**EFFECTIVE DATES:** September 20, 1999. The incorporation by reference provided for by this rule is approved by the Director of the Federal Register as of September 20, 1999.

**FOR FURTHER INFORMATION CONTACT:** Dr. David A. Espeseth, Special Assistant to the Deputy Administrator, Veterinary Services, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737-1231; (301) 734-8245.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR part 113 pertain to standard requirements for the preparation of veterinary biological products. A standard requirement consists of test methods, procedures, and criteria established by the Animal and Plant Health Inspection Service (APHIS) to determine that a veterinary biological product is pure, safe, potent, and efficacious and not worthless, dangerous, contaminated, or harmful.

"Laboratory Techniques in Rabies," which is a guide to laboratory