

Agricultural Marketing Service, USDA

§ 1205.202

provisions of this subpart to govern conduct of the sign-up period.

Subpart—Procedures for the Conduct of Referenda in Connection With Cotton Research and Promotion Order

SOURCE: 74 FR 51070, Oct. 5, 2009, unless otherwise noted.

§ 1205.200 General.

Referenda for the purpose of ascertaining whether producers and importers favor the issuance, continuance, amendment, suspension, or termination of the Cotton Research and Promotion Order shall be conducted in accordance with this subpart.

§ 1205.201 Definitions.

(a) *Act* means the Cotton Research and Promotion Act, as amended (7 U.S.C. 2101–2118; Pub. L. 89–502, as amended).

(b) *Administrator* means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom authority has been delegated to act in the Administrator's stead.

(c) *Agricultural Marketing Service* also referred to as “AMS” means the Agricultural Marketing Service of the Department.

(d) *Cotton* means all Upland cotton harvested in the United States or imports of Upland cotton, including the Upland cotton content of the products derived thereof. The term *cotton* shall not, however, include any entry of imported cotton by an importer which has a value or weight less than the *de minimis* value established by the Secretary or industrial products as that term is defined by regulation.

(e) *Upland Cotton* means all cultivated varieties of the species *Gossypium hirsutum L.*

(f) *Department* means the U.S. Department of Agriculture.

(g) *Deputy Administrator* means the Deputy Administrator for Field Operations and also referred to as “DAFO.”

(h) *Farm Service Agency* also referred to as “FSA” means the Farm Service Agency of the Department.

(i)(1) *Importer* means any person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States and who, during a 12-month period ending no later than 90 days prior to the conduct of the referendum, imported Upland cotton, and

(2) the term *import* means any such entry.

(j) *Order* means the Cotton Research and Promotion Order.

(k) *Person* means any individual 18 years of age or older, or any partnership, corporation, association, or any other entity.

(l) *Producer* means any person who shares in a cotton crop, or in the proceeds thereof, as an owner of the farm, cash tenant, landlord of a share tenant, share tenant, or sharecropper, that planted the cotton during the representative period.

(m) *Representative Period* means the period designated by the Secretary pursuant to section 8 of the Act (7 U.S.C. 2107).

(n) *Secretary* means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may be hereafter be delegated, the authority to act in the Secretary's stead.

(o) *State* means each of the 50 states.

(p) *United States* means 50 states of the United States of America.

(q) *Customs and Border Protection* means the U.S. Customs and Border Protection of the Department of Homeland Security. Customs and Border Protection is also referred to as “CBP.”

§ 1205.202 Agencies through which a referendum shall be conducted.

(a) Agricultural Marketing Service. The Administrator shall:

(1) Determine the referendum period.

(2) Give producers and importers reasonable advance notice of the referendum

(i) by utilizing without advertising expense, available media of public information (including, but not being limited to, press and radio facilities) to announce the dates, places, or methods of voting, and other pertinent information, and

(ii) by such other means as the Administrator may deem advisable.

(3) Provide ballots and related material to be used in the referendum to FSA. The ballots:

(i) shall provide for recording essential information for ascertaining whether the person voting is an eligible voter, and

(ii) may provide for recording the total amount of Upland cotton produced by the producer or the total amount of cotton imported by the importer during the appropriate representative period.

(4) Make available to producers through FSA county offices instructions on voting, an appropriate ballot and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order. The instructions on voting shall explain the method to be used in determining the amount of Upland cotton produced during the representative period and shall specify whether such amount is to be entered on the ballot by the voter, subject to the following terms and conditions:

(i) If a current production year for which harvesting has not been completed is designated as the representative period, the amount of Upland cotton produced shall be determined by the FSA county office on the basis of the acreage planted or in the case of approved prevented plantings under the disaster payment program, the acreage the person intended to plant up to the allotted acreage as determined by the FSA county office, and the established yield for FSA program payment purposes: *Provided*, That on farms for which an established yield has not been established, the county committee shall determine an established yield based on actual production records on the farm for the preceding three years, as adjusted for any abnormal conditions, if available; if not available, on the basis of yield on similar farms in the area.

(ii) On farms in which more than one eligible voter is engaged in production, the vote cast by each voter shall represent only the amount of Upland cotton that is the voter's share of the crop, or proceeds thereof.

(iii) If an eligible voter is engaged in production of Upland cotton on more than one farm, such voter is entitled to only one vote but any vote cast by such voter shall represent the total amount of Upland cotton that is that voter's share of the crop, or proceeds thereof, on all such farms: *Provided*, That only farms for which records are maintained by the FSA county office designated as the voter's polling place shall be considered unless the voter, prior to the expiration of the referendum period, establishes to the satisfaction of such county office the voter's share of the crop, or proceeds thereof, on an additional farm or farms.

(5) Make available to importers through FSA instructions on voting, an appropriate ballot and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order. The instructions on voting shall explain the appropriate method to be used in determining the amount of cotton imported during the representative period and specify whether such amount is to be entered on the ballot. If applicable, the following terms and conditions apply:

(i) For importer entities in which more than one importer is eligible to vote, the vote cast by each importer shall represent only the amount in weight or value of cotton imported by each eligible voter.

(ii) If an eligible importer is engaged in importation of cotton as more than one importer entity, such voter is entitled to only one vote but any vote cast by such voter shall represent the total amount in weight or value, of cotton in the voters share of cotton imported from each such importer entity: *Provided*, that only the importer entities for which records are maintained by CBP or other source determined by the Administrator shall be considered unless the voter, prior to the expiration of the referendum period, establishes to the satisfaction of the Administrator the voters share, in weight or value, of the imported cotton.

(b) *Farm Service Agency*. Except for the functions specified in paragraph (a) of this section the Deputy Administrator shall be in charge of and responsible for conducting the referendum.

Agricultural Marketing Service, USDA

§ 1205.204

Each FSA county office shall be in charge and responsible for conducting such referendum in its State. Each county office shall be responsible for the proper holding of such referendum in its county. It shall be the duty of each FSA county office to conduct each referendum in a fair, unbiased, and impartial manner in accordance with the regulations in this subpart.

§ 1205.203 Voting eligibility.

(a) *General eligibility requirements.* The following persons shall be eligible to vote in an announced referendum—

(1) each person who was engaged in the production of Upland cotton during the representative period; and

(2) each person who is an importer of Upland cotton and who, during a 12-month period ending no later than 90 days prior to the conduct of the referendum, imported Upland cotton.

(b) *Special eligibility requirements.* (1)(i) A person may qualify as an eligible voter by meeting the eligibility requirements, but no such person shall be entitled to more than one vote regardless of the number of importing entities or Upland cotton farms in which the person is interested or the number of communities, counties, or States in which are located farms in which such person is interested: *Provided, however,* That the individual members of a qualified partnership shall each have one vote, but the partnership as such shall not have a vote and an individual who qualifies as an eligible voter by reason of that individual's separate farming or importing operations will be entitled to one vote even though that person is interested in an entity such as (but not limited to) a corporation which is also eligible as a voter and entitled to one vote. A person who, as a guardian, administrator, executor, or trustee engages in the production of Upland cotton or importation of cotton will be eligible to vote in such a fiduciary capacity if, in such a capacity, that person qualifies as an eligible voter.

(ii) In such cases the person for whom he or she is acting in a fiduciary capacity will not be eligible to vote. An individual may, if otherwise eligible, cast a ballot in his or her individual capacity although that person may also cast a

ballot as a guardian, administrator, executor, or trustee. An individual who holds more than one fiduciary position may vote as a fiduciary in each case in which that person is otherwise eligible, as for example, if an individual is administrator of estate X, he or she may cast a ballot as administrator of estate X, and if the same individual is administrator of estate Y, he or she may cast another ballot as administrator or estate Y.

(2) Where a group of several persons, such as a spouse or marital partner, and children, or unrelated individuals, are engaged in the production of Upland cotton under the same lease or cropping agreement, only the person or persons who signed or entered into the lease or cropping agreement shall be eligible to vote. In the event two or more persons are engaged in the production of Upland cotton as joint tenants, tenants in common, or owners of community property, each such person shall be entitled to one vote if otherwise qualified. For example, a husband or a wife is eligible to vote if he or she shares with his or her spouse in the proceeds of the required crop as an owner, cash tenant, share tenant, sharecropper or landlord of a fixed rent, standing rent or share tenant. Thus, if a husband and wife are tenants or sharecropper on a farm, jointly responsible under the rental or sharecropping agreement, both are eligible to vote. This is true whether the rental or sharecropping agreement is written, signed by both parties, or oral, provided both husband and wife made the oral agreement. A minor is not disqualified from voting solely because of minority if otherwise eligible and the minor is not less than 18 years of age.

(c) *Voting by proxy prohibited.* There shall be no voting by proxy or agent but a duly authorized officer of a corporation, association or their legal entity may cast its vote.

§ 1205.204 Voting.

(a) *Place of voting.* 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