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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS-00-10]

Pork Promotion, Research, and Consumer Information Program: Amendment to Procedures for the Conduct of Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Pork Promotion, Research, and Consumer Information Program: Procedures for the Conduct of Referendum, to provide an additional 5-day period to give interested persons an opportunity to challenge producers who requested absentee ballots and were not subject to challenge during the initial challenge period, September 19, 2000, through October 2, 2000. This interim rule also establishes new dates for notifying challenged producers, submitting proof of eligibility, and resolving challenges.

DATES: This interim final rule is effective October 20, 2000. Comments must be received by November 20, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim rule. Comments must be sent to Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2627-S; Livestock and Seed Program, Agricultural Marketing Service (AMS), USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, D.C. 20250-0251; telephone number 202/720-1115, fax 202/720-1125, or by e-mail Ralph.Tapp@usda.gov. Comments should make reference to the date and page number of this issue of the **Federal Register** and they will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2627-S; Livestock and Seed Program, AMS, USDA; Stop 0251; 1400 Independence Avenue, SW.; Washington, D.C. 20250-0251; telephone number 202/720-1115, fax 202/720-1125, or by e-mail Ralph.Tapp@usda.gov.

SUPPLEMENTARY INFORMATION:

Prior documents: Final rule—Pork Promotion, Research, and Consumer Information Program: Procedures for the Conduct of Referendum published July 13, 2000 [65 FR 43498] and Proposed rule—Pork Promotion, Research, and Consumer Information Program: Procedures for the Conduct of Referendum published April 18, 2000 [65 FR 20862].

Regulatory Impact Analysis

Executive Orders 12866 and 12998 and the Regulatory Flexibility Act

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

This interim rule has been reviewed under Executive Order 12998, Civil Justice Reform. It is not intended to have a retroactive effect. The Pork Promotion, Research, and Consumer Information Act of 1985 (Act) states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that any person subject to the Pork Promotion, Research, and Consumer Information Order (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 the law, and requesting a modification of the Order or an exemption from certain provisions or obligations of the Order. The petitioner will have the opportunity for a hearing on the petition. Thereafter the Secretary will issue a decision on the petition. The Act 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 a ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's decision. The petitioner must exhaust his or her administrative remedies before he or she can initiate any such proceedings in the district court.

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 impact of this interim rule on small entities.

According to the December 29, 1999, issue of the "Hogs and Pigs" report published by the National Agricultural Statistics Service, the number of farms with hogs or pigs was 98,460. The majority of these hog producers subject to the Order should be classified as small entities under the criteria established by the Small Business Administration.

This interim rule amends 7 CFR part 1230 Pork Promotion, Research, and Consumer Information Program: Procedures for the Conduct of Referendum; to establish an additional five business days for challenging absentee ballots to give interested persons an opportunity to challenge producers who requested absentee ballots and who were not subject to challenge during the September 19, 2000, through October 2, 2000, challenge period. Those producers whose names were listed on the Absentee Voter Request List and who were subject to challenge because the Absentee Voter Request List indicated they had returned their ballot are not subject to challenge during this additional 5-day period. It also establishes new dates for notifying challenged producers, the dates by which challenged producers must submit proof of eligibility to the county Farm Service Agency (FSA) offices, and the dates by which FSA county offices must resolve challenges. This amendment imposes no new requirements upon those producers who cast their votes by absentee ballot or persons who wish to challenge absentee voters beyond those requirements provided by the pork referendum final rule (65 FR 43498). In the Paperwork Reduction Act section of the final rule

the Agency estimated that 25,000 pork producers would request absentee ballots. It was also estimated that the number of voters whose votes would be challenged would be 4,000. Pork producers who requested absentee ballots during the period provided for in the final rule and who have already been subject to challenge under the provisions of § 1230.631 of the final rule will not be subject to further challenge during the additional 5-day challenge period.

The information collection requirements, as discussed below, will be minimal. Therefore, this interim rule will not impose a significant economic burden on producers affected by these changes. Accordingly, the Administrator of AMS has determined that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction

In accordance with the OMB regulation in 5 CFR part 1320 that implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the reporting and recordkeeping included in 7 CFR part 1230 were previously approved by OMB and were assigned OMB Number 0581-0194.

As discussed in the pork referendum rule, the relevant provisions concerning this action include:

1. Challenge of Voters

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .08 hours per response.

Respondents: Only persons wishing to challenge a vote of another producer will be required to provide such challenge in writing to the county FSA office.

Estimated Number of Respondents: 2,000.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 320 hours.

Total Cost: \$6,400.

2. Proof of Eligibility

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Producers responding to a challenge of their eligibility to vote will be required to submit to the county FSA office records such as sales documents, tax records, or other similar documents to prove that the person owned and sold hogs or pigs during the representative period.

Estimated Number of Respondents: 4,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 4,000 hours.

Total Cost: \$80,000.

3. Appealing a Challenge of Eligibility

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Producers appealing a determination of their ineligibility to vote in the referendum will be required to submit to the county FSA office records such as sales documents, tax records, or other similar documents to prove that the person owned and sold hogs or pigs during the representative period.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Total Cost: \$10,000.

4. Absentee Voter Request List: Form LS-74

Estimate of Burden: Employees in each county FSA office will fill out one or more of the Absentee Voter Request List (Form LS-74). Because only county FSA employees will complete the Absentee Voter Request List, the estimated average reporting burden would not apply to producers voting absentee in the referendum.

Background

Under the Act, a pork referendum was conducted during the period August 18, 2000, through September 21, 2000. The referendum was conducted pursuant to referendum rules published July 13, 2000, [65 FR 43498] Pork Promotion, Research, and Consumer Information Program: Procedures for the Conduct of Referendum: final rule. The referendum was conducted among eligible pork producers who owned and sold one or more hogs or pigs and importers who imported pigs, hogs, pork or pork products to determine whether they favored the continuation of the Order. Producer in-person voting in the referendum was held September 19, 20, 21, 2000, at county FSA offices. Producer absentee ballots were available at those offices from August 18, 2000, through September 18, 2000. Importers could obtain ballots from the FSA headquarters office in Washington, D.C., from August 18, 2000, through September 21, 2000. The representative period to establish voter eligibility was the period from August 18, 1999, through August 17, 2000.

This interim rule amends the final rule on the conduct of the Pork Checkoff Program referendum to provide an additional five business days for challenging absentee votes. These changes will ensure that persons have had an opportunity to challenge all absentee voters and that all eligible absentee votes will be counted. The final pork referendum rules required that persons voting by absentee ballot print their name and address on the outside of the absentee ballot mailing envelope so that FSA county offices could check whether the absentee ballot had been returned. The final rule also required that the absentee ballot be received by the FSA county office before a producer's vote could be challenged. Due to incorrectly completed or missing names and addresses on the absentee ballot mailing envelope, some FSA county offices were not able to determine the name of the person returning the absentee ballot and were, therefore, unable to post a complete list of absentee voters for public review and challenging.

In order to ensure that eligible absentee ballots will be counted, AMS is amending the final referendum rule to allow for an additional period, beginning October 23, 2000, and ending October 27, 2000, for interested persons to review the Absentee Voter Request List (Form LS-74) posted in FSA county offices and challenge absentee voters, who were not subject to challenge during the initial challenge period, September 19, 2000, through October 2, 2000. Those producers whose names were listed on the Absentee Voter Request List and who were subject to challenge because the Absentee Voter Request List (Form LS-74) indicated the date by which they had returned their ballot are not subject to challenge during this additional 5-day period. Absentee voters whose ballots are challenged will have until November 7, 2000, to submit proof of eligibility. These changes do not affect producers who voted in-person or pork importers who voted by mail ballot.

We are deleting the requirement in § 1230.631(c) of the final rule that states that "Absentee ballots have to be received in the FSA county office before a producer's vote can be challenged."

During the conduct of the referendum a question was raised concerning whether a ballot would be invalid if no return address was included on the outside envelope. The return address was for the FSA county offices' administrative convenience to ensure that an absentee ballot had been requested and returned. It was never intended to invalidate an otherwise

complete absentee ballot simply because the return address was missing on the mailing envelope, and the provision in the final rule specifying the reasons for declaring a ballot invalid is consistent with our intent.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This action amends 7 CFR part 1230, the Pork Promotion, Research, and Consumer Information Program: Procedures for the Conduct of Referendum, to provide an additional 5-day period to give interested persons an opportunity to challenge all producers who requested absentee ballots and who were not subject to challenge during the initial challenge period. This interim rule also establishes new dates for notifying challenged producers, submitting proof of eligibility, and resolving challenges.

Voting in the pork referendum was completed on September 21, 2000, and the ballots will be counted by FSA county offices on November 29, 2000, as provided for in § 1230.633 of the final rule. Accordingly, the changes made in this action should be implemented as soon as possible. Further, for the same reasons, a 30-day comment period is deemed appropriate.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Pork and pork products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1230 is amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

§ 1230.631 [Amended]

2. In § 1230.631 paragraph (c) is amended by removing the sentence “Absentee ballots have to be received in the FSA county office before a producer’s vote can be challenged.”

3. A new § 1230.639 is added to read as follows:

§ 1230.639 Additional absentee voter challenge period.

(a) *Absentee Voter Request List.* The Absentee Voter Request List (Form LS–74) will be available for inspection during an additional challenge period of five business days (October 23, 2000–October 27, 2000) at county FSA offices. The Absentee Voter Request List will be posted daily during regular office hours in a conspicuous public location at FSA county offices during the additional challenge period.

(b) *Who can challenge.* Any person can challenge a producer’s vote during the period provided in paragraph (a) of this section. Any person who wants to challenge shall do so in writing and shall include the full name of the individual or corporation or other entity being challenged. Each challenge of a producer vote must be made on a separate sheet of paper and each challenge must be signed by the challenger. The identity of the challenger will be kept confidential except as the Secretary may direct or as otherwise required by law.

(c) *Who can be challenged.* Any person whose name is on the Absentee Voter Request List who was not subject to challenge during the September 19, 2000, through October 2, 2000, challenge period may be challenged. Those producers whose names were listed on the Absentee Voter Request List and who were subject to challenge because the Absentee Voter Request List indicated they had returned their ballot are not subject to challenge during this additional 5-day period.

(d) *Notification of challenges.* The FSA County Committee or its representative, acting on behalf of the Administrator, AMS, will notify challenged producers as soon as practicable, but no later than the 2nd business day (October 31, 2000) after the last day of the additional challenge period. FSA county offices will notify all challenged persons that documentation such as sales documents, tax records, or other similar documents proving that the person owned and sold hogs or pigs during the representative period must be submitted or his or her vote will not be counted. The documentation must be provided to FSA county offices not later than November 7, 2000.

(e) *Determination of challenges.* The FSA County Committee or its representative, acting on behalf of the Administrator, AMS, will make a determination concerning the challenge based on documentation provided by the producer and will notify challenged producers as soon as practicable but no later than November 9, 2000.

(f) *Challenged ballot.* A challenge to a ballot shall be deemed to have been resolved if the determination of the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, is not appealed within the time allowed for appeal or there has been a determination by the Administrator, AMS, after an appeal.

(g) *Appeal.* A person declared to be ineligible to register and vote by the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, can file an appeal at the FSA county office not later than November 17, 2000. The FSA county office shall send a producer’s appeal by facsimile to the Administrator, AMS, on the date it is filed at the FSA office or as soon as practical thereafter.

(h) *Determination of appeals.* An appeal will be determined by the Administrator, AMS, as soon as practical, but in all cases not later than the 45th business day (November 28, 2000) after the date of the last day of the voting period. The Administrator, AMS, shall send her decision on a producer’s appeal to the FSA county office where the producer was initially challenged. The FSA county office shall notify the challenged producer of the Administrator’s, AMS, determination on his or her appeal. The Administrator’s, AMS, determination on an appeal shall be final.

Dated: October 17, 2000.

Kathleen A. Merrigan,
Administrator, Agricultural Marketing Service.

[FR Doc. 00–27024 Filed 10–17–00; 1:39 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 331

[Docket No. 00–038F]

Termination of Designation of the State of North Dakota with Respect to the Inspection of Meat and Meat Food Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal meat inspection regulations by terminating the designation of the State of North Dakota under Titles I, II, and IV of the Federal Meat Inspection Act (FMIA). The State of North Dakota has enacted a State meat inspection program law and regulations that impose