

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. # CN-01-007]

Cotton Research and Promotion Program: Procedures for Conduct of Sign-up Period

AGENCY: Agricultural Marketing Service.
ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the rules and regulations regarding the procedures for the conduct of a sign-up period for eligible cotton producers and importers to request a continuance referendum on the 1991 amendments to the Cotton Research and Promotion Order (Order) provided for in the Cotton Research and Promotion Act (Act) amendments of 1990. The amendments would update various dates, name changes, addresses, and make other administrative changes.

DATES: Comments must be received on or before March 28, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to Whitney Rick, Chief, Research and Promotion Staff, Cotton Program, Agricultural Marketing Service, USDA, PO Box 23278, Washington, DC 20026-3278. Comments should be submitted in triplicate. Comments may also be submitted electronically to: cottoncomments@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at Cotton Program, AMS, USDA, Room 2641-S, 1400 Independence Ave., SW, Washington, DC 20250-0224 during regular business hours. A copy of this notice may be found at: www.ams.usda.gov/cotton/rulemaking.htm.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, Chief, Research and

Promotion Staff, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Ave., SW, Washington, DC 20250-0224, telephone (202) 720-2259, facsimile (202) 690-1718, or email at whitney.rick@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act (7 U.S.C. 2101-2118) provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with USDA 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 requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 et seq.], the Agricultural Marketing Service 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 entities.

There are currently approximately 30,000 producers, and approximately 10,000 importers that are subject to the order. The majority of these producers and importers are small businesses

under the criteria established by the Small Business Administration.

Only those eligible persons who are in favor of conducting a referendum would need to participate in the sign-up period. Of the 46,220 total valid ballots received in the 1991 referendum, 27,879, or 60 percent, favored the amendments to the Order, and 18,341, or 40 percent, opposed the amendments to the Order. This proposed rule would provide to those persons who are not in favor of the continuance of the Order amendments an opportunity to request a continuance referendum.

The eligibility and participation requirements for producers and importers are substantially the same as the rules that established the eligibility and participation requirements for the 1991 referendum, and for the 1997 sign-up period. The January 15 through April 14, 1997 sign-up period did not generate the required number of signatures to hold another referendum. The amendments proposed in this action would update various dates, name changes, addresses and make other miscellaneous changes. However, proxy or power of attorney participation would be prohibited.

The proposed sign-up procedures would not impose a substantial burden or have a significant impact on persons subject to the Order, because participation is not mandatory, not all persons subject to the Order are expected to participate, and USDA will determine producer and importer eligibility. The information collection requirements under the Paperwork Reduction Act are minimal.

Paperwork Reduction Act

The information collections proposed by this rule will be carried out under the Office of Management and Budget (OMB) Control Number 0581-0093. This rule will not add to the overall burden currently approved by OMB and assigned OMB Control Number 0581-0093 under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). This OMB Control Number is referenced in Section 1205.541 of the regulations.

Background

The 1991 amendments to the Cotton Research and Promotion Order (7 C.F.R. 1205 et seq.) were implemented following the July 1991 referendum. The amendments were provided for in the

Cotton Research and Promotion Act (7 U.S.C. 2101–2118) amendments of 1990. These amendments provided for: (1) Importer representation on the Cotton Board by an appropriate number of persons, to be determined by USDA, who import cotton or cotton products into the U.S., and whom USDA selects from nominations submitted by importer organizations certified by USDA; (2) assessments levied on imported cotton and cotton products at a rate determined in the same manner as for U.S. cotton; (3) increasing the amount USDA can be reimbursed from the conduct of a referendum from \$200,000 to \$300,000; (4) reimbursing government agencies that assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of producers to demand a refund of assessments.

On January 14, 2002, USDA issued a determination based on its review, (67 FR 1714), not to conduct a referendum regarding the 1991 amendments to the Order. However, the Act provides that USDA shall nevertheless conduct a referendum at the request of 10 percent or more of the total number of eligible producers and importers that voted in the most recent referendum. The Act provides for a sign-up period during which eligible cotton producers and importers may request that USDA conduct a referendum on continuation of the 1991 amendments to the Order. Accordingly, USDA will provide all eligible Upland cotton producers and importers an opportunity to request a continuance referendum regarding the 1991 amendments to the Order.

The sign-up period will be provided for all eligible producers and importers. Eligible cotton producers would be provided the opportunity to sign-up to request a continuance referendum in person at the county FSA office where their farm is located. If the producers land is in more than one county, the producer shall sign-up at the county office where FSA administratively maintains and processes the producer's farm records. Producers who choose not to visit the county FSA office in person may request a sign-up form in the mail from the same office.

USDA would mail sign-up information, including a written request form, to all known, eligible, cotton importers. Importers who favor the conduct of a continuance referendum would return their signed request forms to USDA, FSA, ORAS, Attention: William A. Brown, PO Box 23278, Washington, DC 20026–3278.

Importers who do not receive a request form in the mail by June 3, 2002, and who meet the eligibility

requirements to participate in the sign-up, may submit a written, signed, request for a continuance referendum. Such request must be accompanied by a copy of the U.S. Customs form 7501 showing payment of a cotton assessment for calendar year 2001. Requests and supporting documentation should be mailed to USDA, FSA, ORAS, Attention: William A. Brown, PO Box 23278, Washington, DC 20026–3278.

The sign-up period will be from June 3, 2002 through August 30, 2002. Producer and importer forms shall only be counted if received by USDA during the stated sign-up period.

Section 8(c)2 of the Act provides that if USDA determines, based on the results of the sign-up, that 10 percent or more of the total number of eligible producers and importers that voted in the most recent 1991 referendum (*i.e.*, 4,622) request a continuance referendum on the 1991 amendments, a referendum will be held within 12 months after the end of the sign-up period. In counting such requests, however, not more than 20 percent may be from producers from any one state or from importers of cotton. For example, when counting the requests, the AMS Cotton Program would determine the total number of valid requests from all cotton-producing states and from importers. Not more than 20 percent of the total requests will be counted from any one state or from importers toward reaching the 10 percent for 4,622 total signatures required to call for a referendum. If USDA determines that 10 percent or more of the number of producers and importers who voted in the most recent referendum favor a continuance referendum. A referendum will be held.

This proposed rule would amend the procedures for the conduct of the current sign-up period. The current rules and regulations provide for sections on definitions, supervision of the sign-up period, eligibility, participation in the sign-up period, counting requests, reporting results and instructions and forms. The Administrator designated all divisions in AMS as programs on September 18, 1997. Hence, this proposal has name, position title, address changes as well as other miscellaneous changes.

The term "Cotton Division" would be changed to "Cotton Program." The term "Director" would be replaced by "Deputy Administrator." In section 1205.18 the term "Producer" is further defined to ensure that all producers that planted cotton during 2001 will be eligible to participate in the sign-up period. In sections 1205.12 and 1205.26 the words "*de minimis* assessment"

have been replaced with similar meaning language. In sections 1205.20, 1205.26, and 1205.27 "calendar year 1995" would change to "calendar year 2001." In section 1205.26 the term "limited partnership" has been added. In sections 1205.27, 1205.28, and 1205.29 sign-up period conduct dates, FSA reporting dates, and mailing addresses have been updated. In section 1205.26 a new subsection (g) is added to prohibit proxy or power of attorney participation. Section 1205.27 (c) that addresses producer participation in the sign-up period, is revised to reflect current Farm Service Agency procedures.

A 10-day comment period is determined to be appropriate because these proposed eligibility and participation requirements are substantially the same as the eligibility and participation requirements that were used in previous referenda and a sign-up period; participation is voluntary; and this rule, if adopted, should be made effective as soon as possible in order to best reflect applicable time frames in the Act.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1205 is proposed to be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In § 1205.12, the last sentence is revised to read as follows:

§ 1205.12 Cotton.

* * * The term *cotton* does not include imported cotton for which the assessment is less than the value of \$2.00 per line item entry as established by regulations.

3. Section 1205.18 is revised to read as follows:

§ 1205.18 Producer.

The term *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.

4. Section 1205.20 is revised to read as follows:

§ 1205.20 Representative Period.

The term *representative period* means the 2001 calendar year.

5. In § 1205.26, paragraphs (a)(1), (a)(2), and (d) are revised and a new paragraph (g) is added to read as follows:

§ 1205.26 Eligibility.

* * * * *

(a) * * *

(1) any person who was engaged in the production of Upland cotton during calendar year 2001; and

(2) any person who was an importer of Upland cotton and imported Upland cotton in excess of the value of \$2.00 per line item entry during calendar year 2001.

* * * * *

(d) An officer or authorized representative of a qualified corporation, association, or limited partnership may submit a request on behalf of that corporation, association, or limited partnership.

* * * * *

(g) Participation in the sign-up by proxy or power of attorney is not authorized.

6. Section 1205.27 is revised to read as follows:

§ 1205.27 Participation in the Sign-up Period.

The sign-up period will be from June 3, 2002, through August 30, 2002. Those persons who favor the conduct of a continuance referendum and who wish to request that USDA conduct such a referendum may do so by submitting such request in accordance with this section. All requests must be received by the appropriate USDA office by August 30, 2002.

(a) Before the sign-up period begins, FSA shall establish a list of known, eligible, Upland cotton producers in the county that it serves during the representative period, and shall also establish a list of known, eligible Upland cotton importers.

(b) Before the start of the sign-up period, USDA shall mail a request form to each known, eligible, cotton importer. Importers who wish to request a referendum and who do not receive a request form in the mail by June 3, 2002, may participate in the sign-up period by submitting a signed, written request for a continuance referendum, along with a copy of a U.S. Customs form 7501 showing payment of a cotton assessment for calendar year 2001. Importers must submit their requests and supporting documents to USDA, FSA, ORAS, Attention: William A. Brown, PO Box 23278, Washington, DC 20026-3278. All requests and supporting documents

must be received by the appropriate FSA office by August 30, 2002.

(c) Each person on the county FSA office lists may participate in the sign-up period. Eligible producers must date and sign their name on the "County FSA Office Sign-up Sheet." A person whose name does not appear on the county FSA office list may participate in the sign-up period. Such person must be identified on FSA-578 during the representative period or provide documentation that demonstrates that the person was a cotton producer during the representative period. Cotton producers not listed on the FSA-578 shall submit at least one sales receipt for cotton they planted during the representative period. Cotton producers must make requests to the county FSA office where the producer's farm is located. If the producer's land is in more than one county, the producer shall make request at the county office where FSA administratively maintains and processes the producer's farm records. It is the responsibility of the person to provide the information needed by the county FSA office to determine eligibility. It is not the responsibility of the county FSA office to obtain this information. If any person whose name does not appear on the county FSA office list fails to provide at least one sales receipt for the cotton they produced during the representative period, the county FSA office shall determine that such person is ineligible to participate in the sign-up period, and shall note "ineligible" in the remarks section next to the person's name on the county FSA office sign-up sheet. In lieu of personally appearing at a county FSA office, eligible producers may request a sign-up form from the county FSA office where the producer's farm is located. If the producer's land is in more than one county, the producer shall make the request for the sign-up form at the county office where FSA administratively maintains and processes the producer's farm records. Such request must be accompanied by a copy of at least one sales receipt for cotton they produced during the representative period. The appropriate FSA office must receive all completed forms and supporting documentation by August 30, 2002.

7. In § 1205.28, the first sentence is revised to read as follows:

§ 1205.28 Counting.

County FSA offices and FSA, Deputy Administrator for Operations Review and Analysis Staff (ORAS), shall begin counting requests no later than September 3, 2002. * * *

8. Section 1205.29 is revised to read as follows:

§ 1205.29 Reporting Results.

(a) Each county FSA office shall prepare and transmit to the state FSA office, by September 10, 2002, a written report of the number of eligible producers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(b) ORAS shall prepare, by September 10, 2002, a written report of the number of eligible importers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(c) Each state FSA office shall, by September 10, 2002, forward all county reports to ORAS. By September 17, 2002, ORAS shall forward its report of the total number of eligible producers and importers that requested a continuance referendum, through the sign-up period, to the Deputy Administrator, Cotton Program, AMS, Stop 0224, 1400 Independence Ave., SW, Washington, DC 20250-0224.

(d) The Chief of the Research and Promotion Staff, Cotton Program, shall prepare a report of the requests received, including the number of eligible persons who requested the conduct of a referendum, and the number of ineligible persons who made requests, to the Deputy Administrator of the Cotton Program, and shall maintain one copy of the report where it will be available for public inspection for a period of 5 years following the end of the sign-up period.

(e) The Deputy Administrator of the Cotton Program shall prepare and submit to the Secretary a report of the results of the sign-up period. The Secretary will conduct a referendum if requested by 10 percent or more of the number of cotton producers and importers voting in the most recent (July 1991) referendum, but not more than 20 percent of the total requests counted toward the 10 percent figure may be from producers in any one state or from importers of cotton. The Secretary shall announce the results of the sign-up period in a separate notice in the **Federal Register**.

Dated: March 12, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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