

# Proposed Rules

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 1220

[No. LS-03-09]

### Soybean Promotion and Research Program: Procedures to Request a Referendum

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the 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 changes are intended to improve the operation of these procedures. The Act provides that the Department of Agriculture (USDA), 5 years after the conduct of the initial referendum and every 5 years thereafter, will give soybean producers the opportunity to request an additional referendum on the Order. Individual producers and other producer entities would be provided the opportunity to request a referendum during a specified period announced by USDA, 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 would be provided at the county FSA office serving the county where the producer owns or rents land. If at least 10 percent of U.S. soybean producers (not in excess of one-fifth of which may be producers in any one State) support the conduct of a referendum, a referendum must be conducted within 1 year of that determination.

**DATES:** Written comments must be received by February 17, 2004.

**ADDRESSES:** Send comments to Kenneth R. Payne, Chief, Marketing Programs

Branch; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA, Room 2638-S; STOP 0251; 1400 Independence Avenue, SW., Washington, DC 20250-0251.

Comments may also be sent electronically to

*SoybeanComments@usda.gov* or by facsimile at (202) 720-1125. All comments should reference the docket number LS-03-09, the date, and the page number of this issue of the **Federal Register**. Comments received may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, or via the Internet at <http://www.ams.usda.gov/lsg/mpb/rp-soy.htm>.

#### FOR FURTHER INFORMATION CONTACT:

Kenneth R. Payne, Chief, Marketing Programs Branch on (202) 720-1115, fax (202) 720-1125, or by e-mail at *Kenneth.Payne@usda.gov* or Phil Brockman, USDA, Farm Service Agency, on (202) 690-8034, fax (202) 720-5900, or by e-mail on *Phil.Brockman@usda.gov*.

Producers can determine the location of county FSA offices by contacting (1) the nearest county FSA office, (2) the State FSA office, or (3) through an online search of FSA's Web site at <http://www.fsa.usda.gov/pas/default.asp>. From the options available on this Web page select "Your local office," click on your State, and click on the map to select a county.

#### SUPPLEMENTARY INFORMATION:

##### Executive Orders 12866

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

##### Executive Orders 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposal is not intended to have a retroactive effect. This proposed rule would not preempt any 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 section 1971 of the Act, a person subject to the Order may file a petition with USDA stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order,

## Federal Register

Vol. 69, No. 17

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is not in accordance with the law and requesting 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, USDA would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review USDA's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

Further, section 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 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 referenda conducted during specified periods by a State relating to the continuation or termination of a QSSB or State soybean assessment.

#### Regulatory Flexibility Act

The Agricultural Marketing Service has determined that this proposed rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*). Participation in the Request for Referendum is voluntary. Not all persons subject to the Order are expected to participate. USDA personnel would determine producer eligibility.

For the purposes of the Request for Referendum, the Secretary would use the most recent number of soybean producers identified by USDA's FSA. The latest number of soybean producers identified by FSA was obtained by averaging the number of soybeans producers for crop years 2001 (597,151) and 2002 (573,825). Therefore, the

number of soybean producers who would be eligible to participate in the Request for Referendum would be 585,488. The majority of producers subject to the Order are small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.201). SBA defines small agricultural producers as those having annual receipts of less than \$750,000 annually.

This proposed rule would revise the current procedures for soybean producers to request a referendum on the Order. The proposed changes affect a number of sections in subpart F of part 1220, and include requiring documentation with form LS-51-1 to demonstrate that the producer or producer entity paid soybean assessments. Other changes are intended to improve the operation of the procedures. The procedures to request a referendum on the Soybean Checkoff Program would permit all eligible producers who have been engaged in the production of soybeans or soybean products, during a representative period, to participate.

The information collection requirements, as discussed below, are minimal. Requesting a form by mail, in-person, facsimile, or via the Internet would not impose a significant economic burden on participants. Accordingly, the Administrator of AMS has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. Chapter 35), the reporting and recordkeeping requirements included in 7 CFR part 1220 were previously approved by OMB and were assigned OMB control number 0581-0093. The purpose of this proposed rule is to provide soybean producers the opportunity to request a referendum on the Order. The proposed changes would affect the information collection requirements by requiring documentation to be provided with form LS-51-1. However, providing the documentation will have no significant impact on the approved per response burden for form LS-51-1.

#### 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 1 percent of the net market price of soybeans sold by producers. The final Order establishing a Soybean Promotion, Research, and Consumer Information program was published in the July 9, 1991, issue of the **Federal Register** (56 FR 31043) and assessments began on September 1, 1991.

The Act required that an initial referendum be conducted no earlier than 18 months and not 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. On October 1, 1999, through November 16, 1999, a nationwide request for a referendum on the Order was conducted to determine if there was sufficient interest among soybean producers to vote on whether to continue the Soybean Checkoff Program. If at least 10 percent of the 600,813 soybean producers nationwide (not in excess of one-fifth of which may be producers in any one State) participated in the request for referendum, a referendum would have been held. Only 17,970 eligible soybean producers completed valid requests—far short of the 60,082 required to trigger a referendum.

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, USDA determined that they would use the most recent data of soybean producers identified by USDA's FSA. The latest number of soybean producers identified by FSA was 597,151 soybeans producers for crop year 2001 and 573,825 soybean producers for crop year 2002. The information for crop years 2001 and 2002 are based on acreage reports compiled by FSA on a daily basis. Using the last two crop years would help ensure that all eligible producers were counted. Since some producers use soybeans in rotation with other crops and do not plant soybeans every year or the market for some producers in a particular crop year may not have been conducive for growing soybeans, averaging two crop years would help ensure that all eligible producers were counted.

In an effort to follow procedures similar to determining the number of soybean producers for the Request for Referendum that was conducted in 1999, USDA averaged the number of soybean producers for crop years 2001 and 2002, which averages 585,488 soybean producers. Therefore, USDA has determined that the number of soybean producers who would be eligible to participate in the Request for Referendum would be 585,488.

The Act provides that producers shall have an opportunity to request a referendum 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. Further, producers would be required to provide documentation, such as sales receipts, showing that an assessment was paid during the representative period. USDA proposes that the Request for Referendum period would be a 4-week period announced by the Secretary and that the representative period for which a producer was engaged in the growing of soybeans would be January 1, 2001, to December 31, 2003. The Act also provides that a Request for Referendum may be made in person or by mail-in request at county

Cooperative Extension Service offices or county FSA offices. USDA proposes that providing soybean producers an opportunity to request a referendum at the county FSA office would give soybean producers the greatest opportunity to request a referendum.

The proposed rule sets forth revised 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 would 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.

The following are the proposed revisions to the Order, subpart F, "Procedures to Request a Referendum." We believe that publishing the entire subpart F of the Order would be easier for commenters to review than only publishing the parts that were revised.

Sections 1220.600 through 1220.615 are revised by removing the phrase "the term" from all of the definitions. In addition, the definition for "Department" was deleted; however, it is defined in subpart A, which applies to all subparts of the Order. Definitions for "Farm Service Agency State Committee" and "Farm Service Agency State Executive Director" were also added.

Section 1220.616, the number of soybean producers was revised from 600,813 to 585,488.

Section 1220.618, "Eligibility," is revised by requesting producers to provide evidence that they or the producer entity that they represent has paid the soybean assessment during the representative period.

Section 1220.619, "Time and place for requesting a referendum," added two paragraphs to assist persons in locating FSA county offices and determining which FSA county office to vote.

Section 1220.620, "Facilities," explains the type of facilities that FSA is to provide to persons voting in the request for referendum.

Section 1220.622, "Certification and request procedures," clarified the procedures in requesting a referendum in terms of completing form LS-51-1, providing documentation that the soybean assessment was paid during the representative period, how to obtain forms by mail, facsimile, or via the Internet, and how to return the form and documentation.

Current procedures provide that FSA county offices list and post the names of producers that request a referendum.

Any person could challenge a producer or producer entity's eligibility. Instead, USDA is proposing that producers and producer entities provide documentation that they paid the soybean assessment when they complete form LS-51-1. FSA will then determine whether the producer is eligible, based on the documentation submitted by the producer or producer entity. If FSA cannot determine the person's eligibility or if the person failed to submit the documentation, then FSA shall notify ineligible persons in writing. Persons declared ineligible by FSA have the opportunity to provide additional documentation and will then be notified by FSA of their eligibility.

Section 1220.623, "Canvassing requests," explains that county FSA offices are to start canvassing form LS-51-1 on the 5th business day following the Request for Referendum period. It also explains who and how the canvassing is to be conducted.

Section 1220.624, "Confidentiality," was added to not divulge names of persons requesting a referendum.

The remainder of the proposed Request for Referendum procedures is similar to the 1999 Request for Referendum procedures, as well as, counting and reporting the results from FSA county offices to FSA State offices to the FSA Administrator to the AMS Administrator, and ultimately announcing the results in a press release and in the **Federal Register**.

A 20-day comment period is provided for interested persons to comment on this proposed rule. This comment period is deemed appropriate because the Act provides that the Secretary, 5 years after the conduct of the initial referendum, will give soybean producers the opportunity to request additional referenda on the Order. A 20-day comment period will assist in timely implementation of this rule consistent with the provisions of the Act.

#### List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that title 7, part 1220 be amended as follows:

#### PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1220 continues to read as follows:

**Authority:** 7 U.S.C. 6301–6311.

2. Subpart F is revised to read as follows:

#### Subpart F—Procedures To Request a Referendum

##### Definitions

###### Sec.

- 1220.600 Act.
- 1220.601 Administrator, AMS.
- 1220.602 Administrator, FSA.
- 1220.603 Farm Service Agency.
- 1220.604 Farm Service Agency County Committee.
- 1220.605 Farm Service Agency County Executive Director.
- 1220.606 Farm Service Agency State Committee.
- 1220.607 Farm Service Agency State Executive Director.
- 1220.608 Order.
- 1220.609 Person.
- 1220.610 Producer.
- 1220.611 Public notice.
- 1220.612 Representative period.
- 1220.613 Secretary.
- 1220.614 Soybeans.
- 1220.615 State and United States.

##### Procedures

- 1220.616 General.
- 1220.617 Supervision of the process for requesting a referendum.
- 1220.618 Eligibility.
- 1220.619 Time and place for requesting a referendum.
- 1220.620 Facilities.
- 1220.621 Certifications and request form.
- 1220.622 Certification and request procedures.
- 1220.623 Canvassing requests.
- 1220.624 Confidentiality.
- 1220.625 Counting requests.
- 1220.626 FSA county office report.
- 1220.627 FSA State office report.
- 1220.628 Results of the request for referendum.
- 1220.629 Disposition of records.
- 1220.630 Instructions and forms.

#### Subpart F—Procedures To Request a Referendum

##### Definitions

###### § 1220.600 Act.

*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.

###### § 1220.601 Administrator, AMS.

*Administrator, AMS* means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

**§ 1220.602 Administrator, FSA.**

*Administrator, FSA*, means the Administrator, of the Farm Service Agency, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

**§ 1220.603 Farm Service Agency.**

*Farm Service Agency* also referred to as "FSA" means the Farm Service Agency of USDA.

**§ 1220.604 Farm Service Agency County Committee.**

*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.

**§ 1220.605 Farm Service Agency County Executive Director.**

*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.

**§ 1220.606 Farm Service Agency State Committee.**

*Farm Service Agency State Committee*, also referred to as "FSA State Committee," means the group of persons within a State who are appointed by the Secretary to act as the Farm Service Agency State Committee.

**§ 1220.607 Farm Service Agency State Executive Director.**

*Farm Service Agency State Executive Director*, also referred to as "SED," means the person employed by the FSA State Committee to execute the policies of the FSA State Committee and to be responsible for the day-to-day operation of the FSA State office, or the person acting in such capacity.

**§ 1220.608 Order.**

*Order* means the Soybean Promotion and Research Order.

**§ 1220.609 Person.**

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

**§ 1220.610 Producer.**

*Producer* means 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.

**§ 1220.611 Public notice.**

*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 United Soybean Board is required to provide producers, in writing, this same information during the 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 newsletters, and the like.

**§ 1220.612 Representative period.**

*Representative period* means the period designated by the Secretary pursuant to section 1970 of the Act.

**§ 1220.613 Secretary.**

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

**§ 1220.614 Soybeans.**

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

**§ 1220.615 State and United States.**

*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****§ 1220.616 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 585,488.

**§ 1220.617 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.

**§ 1220.618 Eligibility.**

(a) *Eligible producers.* Each person who was a producer and provides evidence that they or the producer entity they represent has paid an assessment on soybeans 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 or 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.

**§ 1220.619 Time and place for requesting a referendum.**

(a) 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 § 1220.622

during the normal business hours of each county FSA office.

(b) Producers can determine the location of county FSA offices by contacting the nearest county FSA office, the State FSA office or through an online search of FSA's Web site at <http://www.fsa.usda.gov/pas/default.asp>.

(c) Each eligible person shall vote in the county FSA office where FSA maintains and processes the producer's, corporation's, or other entities administrative farm records. For the producer, corporation, or other entity 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, corporation, or other legal entity owns or rents land. An individual or authorized representative of a corporation who grows soybeans in more than one county would request a referendum in the county FSA office where the individual or corporation or other entity does most of its business.

#### **§ 1220.620 Facilities.**

Each county FSA office will provide:

(a) A polling place that is well known and readily accessible to producers in the county and that is equipped and arranged so that each person can complete and submit their request in secret without coercion, duress, or interference of any sort whatsoever, and

(b) A holding container of sufficient size so arranged that no request can be read or removed without breaking seals on the container.

#### **§ 1220.621 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" vote. Individual producers and representatives of other producer entities should read the form carefully. By completing and signing the form, the individual simultaneously certifies eligibility and requests that a referendum be conducted.

#### **§ 1220.622 Certification and request procedures.**

(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.

(1) 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:

(i) The person or the producer entity they represent was a producer of soybeans during the representative period;

(ii) The individual requesting a referendum on behalf of a corporation or other entity is authorized to do so; and

(iii) The individual has submitted only one request for a referendum unless they are also an authorized representative for another eligible corporation or other entity.

(2) The producer, corporation, or other entity must also provide documentation, such as a sales receipt, showing that the producer, corporation, or other entity has paid assessments on soybeans during the representative period.

(3) Only a completed and signed form LS-51-1 accompanied by documentation showing that soybean assessments were paid during the representative period 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, corporation's, or other entity's administrative farm records. For the producer, corporation, or other entity 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, corporation, or other entity owns or rents land. Eligible producers may also obtain form LS-51-1 via the Internet at <http://www.ams.usda.gov/lsg/mpb/rp-soy.htm>. For those persons who chose to obtain form LS-51-1 via the Internet, the completed form and required documentation must be submitted to the county FSA office where FSA maintains and processes the producer's, corporation's, or other entity's administrative farm records. For producer, corporation, or other entity 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, corporation, or other entity owns or rents land.

(c) Producers or producer entities may return form LS-51-1 and the accompanying documentation in-person, by mail, or facsimile as provided in paragraph (a) of this section. Form LS-51-1 returned in-person or by facsimile, must be received in the appropriate county FSA office prior to the close of the work day on the

final day of the Request for Referendum period to be considered a valid request. Forms LS-51-1 and the accompanying documentation returned by mail must be postmarked no later than midnight of the final day of the Request for Referendum period and must be received in the county FSA office prior to the start of canvassing the ballots.

(d) Producers who obtain form LS-51-1 in-person at the appropriate FSA county office may complete and return the form the same day, accompanied by documentation, such as a sales receipt, showing that soybean assessments were paid during the representative period.

#### **§ 1220.623 Canvassing requests.**

(a) Canvassing of form LS-51-1 shall take place at the opening of county FSA offices on the 5th business day following the Request for Referendum period. Such canvassing, acting on behalf of the Administrator, AMS, shall be in the presence of at least two members of the county committee. If two or more of the counties have been combined and are served by one county office, the canvassing of the requests shall be conducted by at least one member of the county committee from each county served by the county office. The FSA State committee or the State Executive Director if authorized by the State Committee, may designate the County Executive Director (CED) and a county or State FSA office employee to canvass the requests and report the results instead of two members of the county committee when it is determined that the number of eligible voters is so limited that having two members of the county committee present for this function is impractical, and designate the CED and/or another county or State FSA office employee to canvass requests in any emergency situation precluding at least two members of the county committee from being present to carry out the functions required in this section.

(b) The request for referendum should be canvassed as follows:

(1) *Number of eligible requests for a referendum.* Each person who was a producer during the representative period and provides documentation to prove that they are a producer will be considered eligible to request a referendum.

(2) *Number of ineligible requests for a referendum.* If FSA cannot determine that a producer is eligible based on the submitted documentation or if the producer fails to submit the required documentation, the producer shall be determined to be ineligible. FSA shall notify ineligible producers in writing as soon as practicable but no later than the

8th business day following the final day of the Request for Referendum period.

(c) *Appeal.* A person declared to be ineligible by FSA can appeal such decision and provide additional documentation to the FSA county office within 5 business days after the postmark date of the letter of notification of ineligibility. FSA will then make a final decision on the producer's eligibility and notify the producer of the decision.

(d) *Number of valid requests for referendum.* A person has been declared eligible and has provided and completed all of the required information on form LS-51-1.

(e) *Number of invalid request for a referendum.* An invalid request for referendum includes, but is not limited to the following:

(1) Form LS-51-1 is not signed 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 midnight of the final day of the Request for Referendum period;

(4) Form LS-51-1 returned by mail was not received in the county FSA office prior to canvassing of the ballots;

(5) Form LS-51-1 is mutilated or marked in such a way that any required information on the form is illegible; or

(6) Form LS-51-1 not returned to the appropriate county FSA office.

#### **§ 1220.624 Confidentiality.**

The names of persons requesting a referendum shall be confidential and may not be divulged except as the Secretary may direct.

#### **§ 1220.625 Counting requests.**

(a) The requests for a referendum shall be counted by county FSA offices on the same day as the requests are canvassed if there are no ineligibility determinations to resolve. For those county FSA offices that do have ineligibility determinations, the requests shall be counted no later than the 14th business day following the final day of the Request for Referendum period.

(b) Requests for a referendum shall be counted as follows:

(1) Total number of producers who returned a Request for Referendum form LS-51-1;

(2) Number of ineligible producers requesting a referendum;

(3) Number of eligible producers requesting a referendum;

(4) Number of valid requests for a referendum; and

(5) Number of invalid requests for a referendum.

#### **§ 1220.626 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, as soon as may be reasonably possible, but in no event later than 18th business day following the final day of the specified period, have prepared and certified the county summary of requests 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.

#### **§ 1220.627 FSA State office report.**

Each FSA State office shall transmit to the Administrator, FSA, as soon as possible, but in no event later than the 20th business day following the final day of the Request for Referendum period, a report summarizing the data contained in each of the reports from the county FSA offices. One copy of the State summary shall be filed for a period of not less than 12 months after the results have been released and available for public inspection after the results have been released.

#### **§ 1220.628 Results of the request for referendum.**

(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. USDA will issue an official press release announcing the results of the Request for Referendum and publish the same results in the **Federal Register**. In addition, USDA will post the official results at the following Web site: <http://www.ams.usda.gov/lsg/mpb/rp-soy.htm>. 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 2638-South, STOP 0251, 1400 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.

#### **§ 1220.629 Disposition of records.**

Each FSA CED will place in sealed containers marked with the identification of the "Request for Soybean Referendum," all of the form LS-51-1's along with the accompanying documentation and county summaries. Such records will be placed in a secure location under the custody of the FSA CED 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 as described above, the CED or designee shall destroy the records.

#### **§ 1220.630 Instructions and forms.**

The Administrator, AMS, is authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart.

Dated: January 21, 2004.

**A.J. Yates,**  
*Administrator, Agricultural Marketing Service.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

**[Docket No. 2001-SW-15-AD]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Agusta S.p.A. Model A109C, A109E, and A109K2 Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to revise an existing airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109C, A109E, and A109K2 helicopters. That AD currently requires inspecting the main rotor blade (blade) tip cap for bonding separation and a crack, and also requires a tap inspection of the tip cap for bonding separation in the blade bond area and a dye penetrant inspection of the tip cap leading edge along the welded joint line