

Impacts Summary

The FSEIS outlines and compares all of the alternatives potential impacts. Both beneficial and adverse effects were identified for activities authorized by ECP that would now be implemented on the new land categories as described in the Proposed Action. Removing debris, shaping and leveling land, re-establishing vegetation, and restoring conservation structures after a natural disaster, as allowed under the existing ECP would now also have long-term benefits for vegetation and wildlife on timberlands and farmsteads included in the Proposed Action. Re-establishing permanent vegetation and conservation structures would ultimately improve local water quality, reduce soil erosion, and enhance wildlife habitat by promoting biological diversity on these new land categories. Beneficial impacts to surface water quality, groundwater quality, forest health, forest-related resources, floodplains, and wetlands would be realized from implementation of the conservation practices established on farmsteads and timberlands. Re-establishing vegetation, wind control measures, and releveling land would all reduce erosion potential and protect the area from soil loss. Restoration activities that include mechanical removal of debris, using heavy equipment to shape and level land, and ground preparations for installing vegetation, would not be substantially different than similar activities on agricultural lands.

However, wildlife may be temporarily displaced during restoration, or displaced long term until habitat structure is re-established after a disaster. It is possible that due to the scope of the damage caused by a natural disaster that no suitable habitat is nearby, or nearby habitat may already have established wildlife at a capacity that cannot sustain additional animals in the long term. Of the new categories of farmland included in the Proposed Action, timberland has the most potential for having undisturbed land. Establishing access roads and restoration of timberland areas would temporarily remove vegetation in the immediate area and have the potential for spreading invasive plant species. This activity also has the potential to increase soil erosion that may increase sedimentation of nearby waters. The use of heavy machinery, especially in timberland areas, could compact soils, impairing water infiltration and vegetation growth.

The Proposed Action to expand the program eligibility to timberland, farmsteads, and farm buildings would increase the potential for encountering a

historic property. The use of heavy equipment could negatively affect historic properties through ground disturbance.

Potential benefits and adverse impacts to these sites would be the same as those described in the current ECP. Most of the above possible adverse impacts may be controlled by employing best management practices that minimize this potential, such as washing equipment before entering or leaving the work area to minimize spreading invasive plant species, ensuring seed mixes do not include invasive or noxious species, controlling access of machinery to the work area, employment of silt fencing, use of vegetative strips to stabilize soil, and stockpiling topsoil for re-use in establishing new vegetation.

Protected species that occur or have the potential to occur in areas approved for ECP would be protected through informal consultation with USFWS during the site-specific environmental evaluation. If impacts are identified, formal consultation with USFWS would be completed.

If negative impacts to listed species are found, it is not likely the land would be approved for ECP. However, FSA would continue to encourage FSA State offices to develop memoranda of understandings with USFWS to expedite reviews at the site specific level.

Under the Proposed Action, expanding the eligibility of ECP allows for the continuation of cost share payments to producers, and allows more producers to apply for assistance.

Rational for Decision

None of the impacts discussed in the FSEIS are considered significant, and there are no adverse cumulative impacts expected on environmental resources. It is possible to manage most of these concerns and therefore minimize any potentially adverse effects by employing best management practices, and through site specific environmental evaluations for certain practices prior to enrolling particular lands into ECP. Further avoidance, minimization, and mitigation of impacts would be addressed in the Federal and State permitting processes prior to enrolling specific lands. These measures would be incorporated into a conservation plan prior to accepting land proposed for enrollment in ECP.

Implementation and Monitoring

FSA will implement the Proposed Action as specified in the ECP FSEIS. The Proposed Action alternative allows different types of land to be eligible for

ECP benefits, thereby potentially providing producers greater financial assistance. Restoring land to agricultural production after a natural disaster provides long-term benefits to water quality, improves soil stability, restores wildlife habitat, and helps to stabilize the local economy. Any deviation from the Proposed Action alternative and the area of potential effects evaluated in the FSEIS may require supplemental environmental analyses. FSA will ensure that impacts are minimized through a process of completing site-specific environmental evaluations for certain ECP practices for each application.

Signed in Washington, DC, on June 25, 2010.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1221

[Doc. No. AMS-LS-10-0003]

Sorghum Promotion and Research Program: Procedures for the Conduct of Referenda

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Promotion, Research, and Information Act of 1996 (Act) authorizes a program of promotion, research, and information to be developed through the promulgation of the Sorghum Promotion, Research, and Information Order (Order). The Act requires that the Secretary of Agriculture (Secretary) conduct a referendum among persons subject to assessments who, during a representative period established by the Secretary, have engaged in the production or importation of sorghum. This proposed rule establishes procedures the Department of Agriculture (USDA) would use in conducting the required referendum as well as future referenda. Eligible persons would be provided the opportunity to vote during a specified period announced by USDA. For the program to continue, it must be approved, with an affirmative vote, by at least a majority of those persons voting who were engaged in the production or importation of sorghum during the representative period.

DATES: Comments regarding this proposal must be received by September 14, 2010.

Comments on this proposal must be posted online at <http://www.regulations.gov> or sent to Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628-S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250-0251; Telephone: (202) 720-1115; Fax: (202) 720-1125. Comments will be made available for public inspection via the Internet at <http://www.regulations.gov>. All comments should reference the docket number, Docket No. AMS-LS-10-0003, the date, and the page number of this issue of the **Federal Register**. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

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@ams.usda.gov or Rick Pinkston, USDA, FSA, DAFO, on 202/690-8034, fax 202/720-5900, or by e-mail on rick.pinkston@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not established in accordance with the law, and may request a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within 2 years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will

issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final 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 final ruling.

Regulatory Flexibility and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), USDA is required to examine the impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Act, which authorizes USDA to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Act states that Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, Government-supervised, commodity promotion programs.

Section 518 of the Act provides three options for determining industry approval or continuation of a new research and promotion program. They are: (1) By a majority of those voting; (2) by a majority of the volume of the agricultural commodity voted in the referendum; or (3) by a majority of those persons voting who also represent a majority of the volume of the agricultural commodity voted in the referendum. In addition, § 518 of the Act provides for referendums to ascertain approval of an Order to be conducted either prior to its going into effect or within 3 years after assessments first begin under an Order. As recommended by representatives of the sorghum industry, the final Order, which was published in the **Federal Register** on May 6, 2008 (73 FR 25398), provides that USDA conduct a referendum within 3 years after assessments begin and that the continuation of the Order be approved by at least a majority of those persons voting for approval who are engaged in the production or importation sorghum.

This proposed rule would establish the procedures USDA would use for the conduct of a nationwide referendum among eligible persons to determine if

the Order should be continued. This proposal would add a new subpart that establishes procedures to conduct the initial and future referendum. The new subpart would cover definitions, certification and voting procedures, eligibility, disposition of forms and records, FSA's role, and reporting the results.

According to the 2007 Census of Agriculture, there are approximately 26,000 persons engaged in the production of sorghum who are subject to the program. Most sorghum producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.201).

In accordance with OMB regulation (5 CFR part 1320) that implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) (PRA), AMS received OMB approval for a new information collection for the sorghum program. Upon approval, this collection was merged into the existing collection numbered 0581-0093.

The information collection requirements are minimal. Public reporting burden on producers and importers for this collection of information is estimated to average 0.01 hours per response with an estimated total number of 166 hours and a total cost of \$3,079.30. Obtaining a ballot by mail, in-person, facsimile, or via the Internet and completing it in its entirety 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.

Background

The Act (U.S.C. 7411-7425), which became effective on April 4, 1996, authorizes USDA to establish generic programs of promotion, research, and information for agricultural commodities designed to strengthen an industry's position in the marketplace and to maintain and expand existing domestic and foreign markets and uses for agricultural commodities. Pursuant to the Act, a proposed Order on the Sorghum Checkoff Program was published in the **Federal Register** on November 23, 2007 (72 FR 65842). The final Order was published in the **Federal Register** on May 6, 2008 (73 FR 25398). Collection of assessments began on July 1, 2008.

This program is funded primarily by those persons engaged in the production of sorghum. Grain sorghum is assessed at a rate of 0.6 percent of net market value received by the producer.

Sorghum forage, sorghum hay, sorghum haylage, sorghum billets, and sorghum silage are assessed at a rate of 0.35 percent of net market value received by the producer. Imported sorghum is also subject to assessment and therefore, sorghum importers are eligible to vote in the referendum. Total annual revenue for the program is approximately \$6,000,000 of which, less than \$100 comes from import assessments.

For purposes of this program, *Sorghum* means any harvested portion of *Sorghum bicolor* (L.) Moench or any related species of the genus *Sorghum* of the family Poaceae. This includes, but is not limited to, grain sorghum (including hybrid sorghum seeds, inbred sorghum line seed, and sorghum cultivar seed), sorghum forage, sorghum hay, sorghum haylage, sorghum billets, and sorghum silage.

The Act requires that a referendum to ascertain approval of the Order must be conducted either prior to the Order going into effect or within 3 years after assessments first begin. The industry recommended to USDA that the referendum be conducted no later than 3 years after assessments first begin to determine whether the Order should be continued. Assessments began on July 1, 2008. Thus, USDA is required to conduct a nationwide referendum among persons subject to the assessment by July 1, 2011.

On January 25, 2010, the Chairman of the United Sorghum Checkoff Program Board signed a letter requesting that the referendum be completed by March 1, 2011. He observed that there is a large area of sorghum production in South Texas, Louisiana, Arkansas and other southern States that begin planting in March. He noted that by conducting the referendum before March 1, 2011, producers would not have to interrupt planting operations at a critical time to go and vote.

The Order would continue if a majority of those persons voting favor continuing the program. If the continuation of the Order is not approved by eligible persons voting in the referendum, USDA would begin the process of terminating the program.

Eligible persons would be required to complete a ballot in its entirety, vote "yes" or "no" to continue the program, and provide documentation showing that they engaged in the production or importation of sorghum during the representative period. The person would sign the ballot certifying that they were engaged in the production or importation of sorghum during a representative period specified by the Secretary to the best of one's knowledge.

USDA proposes that the representative period for the production or importation of sorghum would be July 1, 2008 through December 31, 2010. USDA also proposes that the ballots may be cast in person, by facsimile, or by mail-in vote at the appropriate county FSA or, for importers, AMS offices. Providing producers an opportunity to vote at the county FSA office and importers through the AMS office would give persons subject to the Order the greatest opportunity to vote in the referendum.

Producers would vote at the county Farm Service Agency (FSA) office where FSA maintains and processes the person's administrative farm records. For those eligible producers not participating in FSA programs, the opportunity to vote would be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production of sorghum in more than one county would vote in the county FSA office where the person does most of his or her business. Eligible producer voters 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.

Importers would vote by contacting Craig Shackelford, Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628-S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250-0251; Telephone: (202) 720-1115; Fax: (202) 720-1125; craig.shackelford@ams.usda.gov. Forms may be obtained via the Internet at <http://www.ams.usda.gov/LSMarketingPrograms>.

The proposed rule establishes procedures USDA would use in conducting the required referendum as well as future referendums provided under the Act. The proposed rule includes definitions, eligibility, certification and voting procedures, reporting results, and disposition of the forms and records.

FSA would coordinate State and county FSA roles in conducting the referendum by (1) Determining producer eligibility, (2) canvassing and counting ballots, and (3) reporting the results. AMS would coordinate importer voting. A 60 day comment period is provided for interested persons to comment.

List of Subjects in 7 CFR Part 1221

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Sorghum and sorghum products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that part 1221, Title 7 of Chapter XI of the Code of Federal Regulations, be amended as follows:

PART 1221—SORGHUM PROMOTION, RESEARCH, AND INFORMATION

1. The authority citation for 7 CFR part 1221 continues to read as follows:

Authority: 7 U.S.C. 7411-7425.

2. Subpart B is added to read as follows:

Subpart B—Procedures for the Conduct of Referenda

Definitions

Sec.

- 1221.200 Terms defined.
- 1221.201 Administrator, AMS.
- 1221.202 Administrator, FSA.
- 1221.203 Eligibility.
- 1221.204 Farm Service Agency.
- 1221.205 Farm Service Agency County Committee.
- 1221.206 Farm Service Agency County Executive Director.
- 1221.207 Farm Service Agency State Committee.
- 1221.208 Farm Service Agency State Executive Director.
- 1221.209 Public notice.
- 1221.210 Representative period.
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Procedures

- 1221.220 General.
- 1221.221 Supervision of the process for conducting referenda.
- 1221.222 Eligibility.
- 1221.223 Time and place of the referendum.
- 1221.224 Facilities.
- 1221.225 Certifications and referendum ballot form.
- 1221.226 Certification and voting procedures.
- 1221.227 Canvassing voting ballots.
- 1221.228 Counting ballots.
- 1221.229 FSA county office report.
- 1221.230 FSA State office report.
- 1221.231 Results of the referendum.
- 1221.232 Disposition of records.
- 1221.233 Instructions and forms.
- 1221.234 Confidentiality.

Subpart B—Procedures for the Conduct of Referenda

Definitions

§ 1221.200 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as

the definition of such terms in subpart A of this part.

§ 1221.201 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.

§ 1221.202 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.

§ 1221.203 Eligibility.

Eligibility is defined as any person subject to the assessment who during the representative period determined by the Secretary has engaged in the production or importation of sorghum. Such persons are eligible to participate in the referendum.

§ 1221.204 Farm Service Agency.

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

§ 1221.205 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.

§ 1221.206 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.

§ 1221.207 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.

§ 1221.208 Farm Service Agency State Executive Director.

Farm Service Agency State Executive Director, Farm Service Agency State Executive Director, also referred to as "SED," means the person within a State

who is appointed by the Secretary to be responsible for the day-to-day operation of the FSA State Office, or the person acting in such capacity.

§ 1221.209 Public notice.

Public notice means not later than 30 days before the referendum is conducted, the Secretary shall notify the eligible voters in such manner as determined by the Secretary, of the voting period during which voting in the referendum will occur. The notice shall explain any registration and voting procedures established under section 518 of the Act.

§ 1221.210 Representative period.

Representative period means the period designated by the Secretary pursuant to section 518 of the Act.

§ 1221.211 Voting period.

The term *voting period* means a 4-week period to be announced by the Secretary for voting the referendum.

Procedures

§ 1221.220 General.

A referendum to determine whether eligible persons favor the continuance of this part shall be carried out in accordance with this subpart.

(a) The referendum will be conducted at county FSA offices for producers and through AMS headquarters offices for importers.

(b) The Secretary shall determine if at least a majority of those persons voting favor the continuance of this part.

§ 1221.221 Supervision of the process for conducting referenda.

The Administrator, AMS, shall be responsible for supervising the process of permitting persons to vote in a referendum in accordance with this subpart.

§ 1221.222 Eligibility.

(a) Any person subject to the assessment who during the representative period determined by the Secretary has engaged in the production or importation of sorghum is eligible to participate in the referendum.

(b) *Proxy registration*. Proxy registration is not authorized, except that an officer or employee of a corporate producer or importer, or any guardian, administrator, executor, or trustee of a person's estate, or an authorized representative of any eligible producer or importer entity (other than an individual person), such as a corporation or partnership, may vote on behalf of that entity. Further, an individual cannot vote on behalf of another individual (*i.e.*, spouse, family

members, sharecrop lease, joint tenants, tenants in common, owners of community property, a partnership, or a corporation).

(c) Any individual, who votes on behalf of any producer or importer entity, shall certify that he or she is authorized by such entity to take such action. Upon request of the county FSA or AMS office, the person voting may be required to submit adequate evidence of such authority.

(d) *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 who engaged in the production or importation of sorghum during the representative period as a producer or importer entity shall be entitled to cast only one vote; provided, however, that any individual member of a group who is an eligible person separate from the group may vote separately.

§ 1221.223 Time and place of the referendum.

(a) The opportunity to vote in the 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 vote following the procedures established in this subpart during the normal business hours of each county FSA or AMS office.

(b) Persons 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.

(c) Each eligible producer shall cast a ballot in the county FSA office where FSA maintains the person's administrative farm records. For eligible persons not participating in FSA programs, the opportunity to vote will be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production of sorghum in more than one county will vote in the county FSA office where the person does most of his or her business.

(d) Each eligible importer would cast a ballot in the Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628-S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250-0251; Telephone: (202) 720-1115; Fax: (202) 720-1125.

§ 1221.224 Facilities.

Each county FSA office will provide:

(a) A voting place that is well known and readily accessible to persons in the county and that is equipped and

arranged so that each person can complete and submit a ballot in secret without coercion, duress, or interference of any sort whatsoever, and

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

§ 1221.225 Certification and referendum ballot form.

Form LS-379 shall be used to vote in the referendum and certify eligibility. Eligible persons will be required to complete a ballot in its entirety, vote "yes" or "no" to continue the program and provide documentation such as a sales receipt or remittance form showing that the person voting was engaged in the production of sorghum during the representative period. The person or authorized representative shall sign the ballot certifying that they or the entity they represent were engaged in the production of sorghum during the representative period.

§ 1221.226 Certification and voting procedures.

(a) Each eligible person shall be provided the opportunity to cast a ballot during the voting period announced by the Secretary.

(1) Each eligible person shall be required to complete Form LS-379 in its entirety, sign it and, provide evidence that they were engaged in the production or importation of sorghum during the representative period. The person must legibly place his or her name and, if applicable, the entity represented, address, county and, telephone number. The person shall sign and certify on Form LS-379 that:

(i) The person was engaged in the production or importation of sorghum during the representative period;

(ii) The person voting on behalf of a corporation or other entity is authorized to do so;

(iii) The person has cast only one vote; and

(2) Only a completed and signed Form LS-379 accompanied by supporting documentation showing that the person was engaged in the production or importation of sorghum during the representative period shall be considered a valid vote.

(b) To vote, eligible producers may obtain Form LS-379 in-person, by mail, or by facsimile from county FSA offices or through the Internet during the voting period. A completed and signed Form LS-379 and supporting documentation, such as a sales receipt or remittance form, must be returned to the appropriate county FSA office where

FSA maintains and processes the person's administrative farm records. For a person not participating in FSA programs, the opportunity to vote in a referendum will be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production of sorghum in more than one county will vote in the county FSA office where the person does most of his or her business. A completed and signed Form LS-379 and the supporting documentation may be returned in-person, by mail, or facsimile to the appropriate county FSA office. Form LS-379 and supporting documentation 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 voting period to be considered a valid ballot. Form LS-379 and the accompanying documentation returned by mail must be postmarked no later than midnight of the final day of the voting period and must be received in the county FSA office on the 5th business day following the final day of the voting period. To vote, eligible importers may obtain Form LS-379 in-person, by mail or, by facsimile from AMS offices or through the Internet during the voting period. A completed and signed Form LS-379 and supporting documentation, such as a Customs and Border Protection form 7501, must be returned to the from the AMS headquarters office.

(c) A completed and signed Form LS-379 and the supporting documentation may be returned in-person, by mail, or facsimile to the appropriate county FSA office for producers and to AMS office for importers. Form LS-379 and supporting documentation returned in-person or by facsimile, must be received in the appropriate county FSA office for producers or the AMS office for importers prior to the close of the work day on the final day of the voting period to be considered a valid ballot. Form LS-379 and the accompanying documentation returned by mail must be postmarked no later than midnight of the final day of the voting period and must be received in the county FSA office for producers and the AMS office for importers on the 5th business day following the final day of the voting period.

(d) Persons who obtain Form LS-379 in-person at the appropriate FSA county office may complete and return it the same day along with the supporting documentation. Importers who obtain Form LS-379 in-person at the appropriate AMS office may complete and return it the same day along with the supporting documentation.

§ 1221.227 Canvassing voting ballots.

(a) Canvassing of Form LS-379 shall take place at the appropriate county FSA offices or AMS office on the 6th business day following the final day of the voting period. Canvassing of producer ballots 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 ballots 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) Canvassing of importer ballots will be performed by AMS personnel or any other person as deemed necessary.

(c) Form LS-379 should be canvassed as follows:

(1) *Number of valid ballots.* A person has been declared eligible by FSA or AMS to vote by completing Form LS-379 in its entirety, signing it, and providing supporting documentation that shows the person who cast the ballot during the voting period was engaged in the production or importation of sorghum. Such ballot will be considered a valid ballot.

(2) *Number of ineligible ballots.* If FSA or AMS cannot determine that a person is eligible based on the submitted documentation or if the person fails to submit the required supporting documentation, the person shall be determined to be ineligible. FSA or AMS shall notify ineligible persons in writing as soon as practicable but no later than the 8th business day following the final day of the voting period.

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

person's eligibility and notify the person of the decision.

(e) *Invalid ballots.* An invalid ballot includes, but is not limited to the following:

(1) Form LS-379 is not signed or all required information has not been provided;

(2) Form LS-379 and supporting documentation returned in-person or by facsimile was not received by close of business on the last business day of the voting period;

(3) Form LS-379 and supporting documentation returned by mail was not postmarked by midnight of the final day of the voting period;

(4) Form LS-379 and supporting documentation returned by mail was not received in the county FSA or AMS office by the 5th business day following the final day of the voting period;

(5) Form LS-379 or supporting documentation is mutilated or marked in such a way that any required information on the Form is illegible; or

(6) Form LS-379 and supporting documentation not returned to the appropriate county FSA or AMS office.

§ 1221.228 Counting ballots.

(a) Form LS-379 shall be counted by county FSA offices or the AMS office on the same day as the ballots 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 voting period.

(b) Ballots shall be counted as follows:

(1) Number of valid ballots cast;

(2) Number of persons favoring the Order;

(3) Number of persons not favoring the Order;

(4) Number of invalid ballots.

§ 1221.229 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 shall submit no later than the 18th business day following the final day of the specified period. 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 calendar 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.

§ 1221.230 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 voting 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.

§ 1221.231 Results of the referendum.

(a) The Administrator, FSA, shall submit to the Administrator, AMS, reports from all State FSA offices. The Administrator, AMS shall tabulate the results of the ballots. USDA will issue an official press release announcing the results of referendum and publish the same results in the **Federal Register**. In addition, USDA will post the official results on its Web site. State reports and related papers shall be available for public inspection upon request during normal business hours at the Marketing Programs Branch; Livestock and Seed Program, AMS, USDA, Room 2628-S; 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.

§ 1221.232 Disposition of records.

Each FSA CED will place in sealed containers marked with the identification of the "Sorghum Checkoff Program Referendum," all of the Forms LS-379 along with the accompanying documentation and county summaries. Such records will be placed in a secure location under the custody of 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.

§ 1221.233 Instructions and forms.

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

§ 1221.234 Confidentiality.

The names of persons voting in the referendum and ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the votes but may not interfere with the process.

Dated: July 9, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1429

RIN 0560-A102

Asparagus Revenue Market Loss Assistance Payment Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) proposes regulations to implement the new Asparagus Revenue Market Loss Assistance Payment (ALAP) Program authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The purpose of the program is to compensate domestic asparagus producers for marketing losses resulting from imports during the 2004 through 2007 crop years. Payments will be calculated based on 2003 crop production. Through the ALAP Program, CCC is authorized to provide up to \$15 million in direct payments to asparagus producers. This rule proposes eligibility requirements, payment application procedures, and the method for calculating individual payments. This rule also proposes new information collection for the payment application.

DATES: We will consider comments that we receive by September 14, 2010.

ADDRESSES: We invite you to submit comments on this proposed rule and on the information collection. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- E-mail: Gene.rosera@wdc.usda.gov.
- Fax: (202) 690-1536.
- Mail: Director, Price Support Division, Farm Service Agency (FSA), U.S. Department of Agriculture (USDA), Mail Stop 0512, Rm. 4095-S, 1400