

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 1230**

[No. LS-99-14]

Pork Promotion, Research, and Consumer Information Program: Procedures for the Conduct of Referendum**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: This final rule sets forth the procedures for conducting a referendum to determine if producers and importers favor continuation of the Pork Checkoff Program, formally known as the Pork Promotion, Research, and Consumer Information Order (Order). The Pork Checkoff Program was implemented September 5, 1986, as authorized by the Pork Promotion, Research, and Consumer Information Act of 1985 (Act). The Secretary of Agriculture (Secretary) will conduct a referendum among persons who have been producers and importers during the period August 18, 1999, through August 17, 2000, to determine whether producers and importers favor the continuation of the Pork Checkoff Program. Producers and importers can vote from August 18, 2000, through September 21, 2000. The Pork Checkoff Program would be terminated if a majority of producers and importers voting in the referendum favor termination.

EFFECTIVE DATE: This final rule is effective July 14, 2000.

Referendum Dates: Producers can vote in-person in the referendum on September 19, 20, 21, 2000, at the county Farm Service Agency (FSA) offices. Absentee ballots for producers will be available from county FSA offices from August 18, 2000, through September 18, 2000. Importers can obtain ballots from the FSA headquarters office in Washington, DC, from August 18, 2000, through September 21, 2000, at the address listed in this rule. The representative period to establish voter eligibility will be the period from August 18, 1999, through August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, Room 2627-S; Livestock and Seed Program, Agricultural Marketing Service (AMS), USDA; Stop 0251; 1400 Independence Avenue, SW.; Washington, DC 20250-0251; telephone number 202/720-1115,

fax 202/720-1125, or by e-mail Ralph.Tapp@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 the FSA website at www.fsa.usda.gov/pas/search.htm. From the options available on this webpage select "FSA Field Office Search," select "St Abbrev," and enter the county name in the "Cnty code" block. Some county FSA offices service multiple counties.

SUPPLEMENTARY INFORMATION: This final rule is being carried out in accordance with the Act (7 U.S.C. 4801-4819).

Question and Answer Overview*When Will the Referendum Be Held?*

Producers can vote in-person in the referendum on 3-consecutive days on September 19, 20, 21, 2000. Producers voting by absentee ballot may obtain ballot packages from August 18, 2000, through September 18, 2000. Importers may obtain mail ballot packages from August 18, 2000, through September 21, 2000.

Who Is Eligible To Vote in the Referendum?

People and businesses who owned and sold hogs or pigs or imported hogs, pigs, pork, or pork products during the representative period from August 18, 1999, through August 17, 2000, are eligible to vote. This means that there are three types of eligible voters: (1) Persons who own and sell hogs or pigs in the United States in their own name; (2) persons who import hogs, pigs, pork, or pork products into the United States in their own name; and (3) persons who are designated to cast the single vote for a business entity that owns and sells, or imports hogs, pigs, pork, or pork products into the United States. Persons ineligible to vote include persons who do not pay the pork checkoff such as contract growers unless they have owned and sold hogs or pigs in their own name at some time during the representative period of August 18, 1999, to August 17, 2000, as well as persons who left hog farming prior to the beginning date of the representative period of August 18, 1999.

Where Do I Vote if I'm a U.S. Producer?

In-person voting will take place at the Department of Agriculture's (Department) FSA county offices. If you currently participate in FSA programs, you should vote at the FSA county office where you normally do business. If you do not participate in FSA programs, go to the FSA office in the

county where you raise hogs or pigs (or if you raise hogs or pigs in more than one county, the county FSA office where most of your business is conducted). All county FSA office locations can be found on the FSA website at www.fsa.usda.gov/pas/search.htm.

Can I Vote by Absentee Ballot?

Yes. We recognize that producers are very busy so absentee voting will be allowed from August 18, 2000, through September 21, 2000, in addition to the September 19-21, 2000, 3-day in-person voting period. Eligible voters may request an absentee ballot from the appropriate county FSA office. Producers can begin requesting absentee ballots on August 1, 2000. However, absentee ballots will not be available for distribution to producers until August 18, 2000. Producers can request an absentee ballot in-person, by telephone, by facsimile, or by mail beginning August 1, 2000. To count, absentee ballots must be delivered to the county office no later than September 21, 2000, or be postmarked by September 21, 2000, and be received by the county FSA office no later than September 28, 2000.

Where do I Vote if I'm an Importer?

Voting will take place by mail. Voting by mail will be allowed for the same 35-day period of producer voting. Importers can request a ballot beginning August 1, 2000, from the FSA headquarters office in Washington, DC, at the address listed in this final rule. However, mail ballots will not be available for distribution to importers until August 18, 2000.

How Will the Department Make Certain That Only Eligible Persons Vote in the Referendum?

FSA county offices will publicly display a list of all people who have voted at that office, by absentee ballot as well as in-person. This will allow scrutiny by everyone. If a person believes that an ineligible person has voted, he or she can challenge that person's ballot. When a person's vote has been challenged, the challenged voter will be required to submit documentation to the county FSA office to prove eligibility. The Department will require importers to submit proof that they paid the pork assessment when they request ballots.

One commenter suggested several minor clarifying changes in the answers to three of the eight questions published with the proposed rule. We agree that these changes clarify the answers and have made the suggested changes. The

comments and responses are discussed in the section on comments.

Regulatory Impact Analysis

Executive Orders 12866 and 12998 and the Regulatory Flexibility Act

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

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

The Act provides that any person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law, and requesting a modification of the Order or an exemption from certain provisions or obligations of the Order. The petitioner will have the opportunity for a hearing on the petition. Thereafter the Secretary will issue a decision on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or carries on business has jurisdiction to review a ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's decision. The petitioner must exhaust his or her administrative remedies before he or she can initiate any such proceedings in the district court.

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 United States Code (U.S.C.) 601 *et seq.*), the Administrator of AMS has considered the economic impact of this final action on small entities.

According to the December 29, 1999, issue of the "Hogs and Pigs" report published by the National Agricultural Statistics Service (NASS), the number of farms with hogs or pigs was 98,460. According to the U.S. Customs Service, in 1999 there were 524 importers of hogs, pigs, pork, or pork products in the United States. The majority of the 98,460 hog producers and 524 importers subject to the Order should be classified

as small entities under the criteria established by the Small Business Administration.

This rule is being carried out in accordance with the Act and establishes procedures for the conduct of a referendum to determine whether producers and importers favor continuation of the Pork Checkoff Program. Such procedures will permit all eligible producers who have been engaged in the production and sale of hogs or pigs and importers who have been engaged in the importation of hogs, pigs, pork, or pork products to vote in the referendum. Participation in the referendum is voluntary. Producers may cast their votes either by absentee ballot or in-person at county FSA offices. Importers may cast their ballots by mail at the FSA headquarters office in Washington, DC.

The information collection requirements, as discussed below, will be minimal. Casting votes by mail or in-person will not impose a significant economic burden on participants. Accordingly, the Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the OMB regulation 5 CFR part 1320 that implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), OMB has approved the information collection requirements contained in this final rule.

Title: Pork Promotion, Research, and Consumer Information Program: Procedures for the Conduct of Referendum.

OMB Number: 0581-0194.

Expiration Date of Approval: 06/30/2003.

Type of Request: Revision of an approved information collection.

Abstract: The purpose of this final rule is to determine whether pork producers and importers favor continuation of the Pork Checkoff Program. The question on the ballot will be: "Do you favor continuing the Pork Checkoff program? Yes or No." For producers, provisions are made for in-person voting, absentee voting, and the challenge of voters. For importers, provision is made for voting by mail only. Importers will submit a copy of the U.S. Customs Service Form 7501 (as proof of eligibility) along with their request for a mail ballot.

AMS estimates that the cost per person to comply with the reporting provision of this rule is \$20 per hour for a total cost of \$222,400. This is based on

an estimated 50,000 voters participating in the referendum.

In this final rule, information collection requirements include a one-time submission of the required information on the following forms that are included in an Appendix at the end of this action.

(a) Producers voting in-person will:

(1) Print their name and address on the In-Person Voter Registration List (Form LS-75).

(2) Complete a Pork Producer In-Person Voting form (Form LS-72).

(3) Insert the ballot into the "Pork Ballot" envelope (Form LS-72-1).

(4) Complete the In-Person Registration and Certification form (printed on the "Pork Referendum" envelope) (Form LS-72-2), and insert the sealed "Pork Ballot" envelope (Form LS-72-1), containing the ballot, into the "Pork Referendum" envelope (Form LS-72-2).

(b) Producers voting absentee will:

(1) Complete, a combined registration and absentee ballot form (Form LS-73).

(2) Insert the ballot portion into a "Pork Ballot" envelope (Form LS-72-1).

(3) Put the sealed "Pork Ballot" (Form LS-72-1) envelope and the completed registration form in the "Pork Referendum" envelope (Form LS-73-1).

(c) Importers voting in the referendum will have their names placed on an Importer Ballot Request List (Form LS-77) by FSA employees. Importers will vote using a mail ballot package consisting of a combined ballot and registration and certification form (Form LS-76), a "Pork Ballot" envelope (Form LS-72-1), and a "Pork Referendum" envelope (Form LS-73-1). They will complete the ballot and registration and certification form and place the ballot portion into the "Pork Ballot" envelope (Form LS-72-1), and place the sealed "Pork Ballot" envelope (Form LS-72-1) into the "Pork Referendum" envelope (Form LS-73-1) along with the completed registration form.

(d) This final rule requires each producer of hogs or pigs, who votes in-person to print on the In-Person Voter Registration List (Form LS-75) his or her name and address and, if applicable, the name and address of the corporation or other business entity he or she represents. Employees in each county FSA office will fill out the Absentee Voter Request List (Form LS-74).

1. Pork Producer In-Person Voting: Form LS-72, Pork Ballot envelope: Form LS-72-1, and In-Person Registration and Certification envelope: Form LS-72-2

Estimate of Burden: The public reporting burden for this collection of

information is estimated to average .10 hour per response.

Respondents: Only producers voting in-person in the referendum will use these forms.

Estimated Number of Respondents: 25,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,500 hours.

Total Cost: \$50,000.

2. Pork Producer Absentee Voting: Form LS-73, Pork Ballot envelope: Form LS-72-1, and Pork Referendum envelope: Form LS-73-1

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .10 hour per response.

Respondents: Only producers requesting an absentee ballot to vote in the referendum will use these forms.

Estimated Number of Respondents: 25,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,500 hours.

Total Cost: \$50,000.

3. In-Person Voter Registration List: Form LS-75

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .03 hour per response.

Respondents: Only producers voting in-person in the referendum will use this form.

Estimated Number of Respondents: 25,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 750 hours.

Total Cost: \$15,000.

4. Absentee Voter Request List: Form LS-74

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

5. Challenge of Voters

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

Respondents: Only persons wishing to challenge a vote of another producer will be required to provide such

challenge in writing to the county FSA office.

Estimated Number of Respondents: 2,000.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 320 hours.

Total Cost: \$6,400.

6. Proof of Eligibility

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

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

Estimated Number of Respondents: 4,000.

Estimated Number of Responses per Respondent: 1.

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

Total Cost: \$80,000.

7. Appealing a Challenge of Eligibility

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

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

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Total Cost: \$10,000.

8. Pork Importer Mail Voting: Form LS-76, Pork Ballot Envelope: Form LS-72-1, and Pork Referendum Envelope: Form LS-73-1

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .10 hour per response.

Respondents: Importers can only vote by mail ballot in the referendum and will use these forms.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 50 hours.

Total Cost: \$1,000.

9. Submission of U.S. Customs Service Form 7501 as Proof of Importer Eligibility

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

Respondents: Importers voting in the referendum will submit a copy of U.S. Customs Service Form 7501 with their request for a mail ballot.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Total Cost: \$10,000.

10. Importer Ballot Request List: Form LS-77

Estimate of Burden: Employees in the Washington, DC, FSA headquarters office will print the name and address of the importer requesting the ballot on the Importer Ballot Request List (Form LS-77). Because only headquarters FSA employees will complete the Importer Ballot Request List, the estimated average reporting burden would not apply to importers voting in the referendum.

In the proposed rule published April 18, 2000, comments were invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

One commenter recommended several changes to the Paperwork Reduction Act section of the proposed rule. They are organized below by the applicable section.

Abstract

The commenter suggested that the Department require producers to provide documentation as evidence of their status as a producer to be eligible to vote the same as it requires for importers to obtain a ballot. The commenter believed that requiring

producer documentation when requesting a ballot would reduce the costs of challenges. Importers must submit a U.S. Custom Form 7501 with their request for a mail ballot. The Department is requiring importers to submit this form because unlike producers who vote in the county FSA offices, and may be known by the FSA county employees and by other producers in the county, importers are not typically known by these persons. For this reason, FSA is requiring that importers vote in one location, the FSA headquarters office in Washington, DC. The submission of Form 7501 up-front will eliminate the challenge process.

The Department believes that requiring producers to present documentation that they have sold hogs or pigs during the representative period, to prove their eligibility prior to obtaining a ballot, would increase the paperwork burden on the public. Assuming that it takes a producer the same amount of time to acquire and present documentation at the time of voting as it does to present the same proof in responding to a challenge, the public paperwork burden would be 50,000 hours if required of all producers at a cost of \$1,000,000. By contrast, if 4,000 producers' ballots are challenged, the public paperwork burden would be 4,000 hours at a cost of \$80,000.

Section 5 Challenge of Voters

The same commenter recommended that under section 5, Challenge of Voters, the wording under Respondents should be corrected to be consistent with the rule section by replacing the word "producers" with the word "persons." The Department agrees. Any person can challenge the ballot of another person. Accordingly "persons" is substituted for "producers" making that statement consistent with the regulatory text.

Section 6 Proof of Eligibility

The same commenter suggested that the number of producers having to respond to challenges listed as Estimated Number of Respondents under section 6, Proof of Eligibility, would be approximately 8,000 as opposed to the proposed 2,000. The commenter based his estimate on his interpretation of the results of AMS' evaluation of petitions submitted by the Campaign for Family Farms (CFF) requesting that the Secretary conduct a referendum of the Pork Checkoff Program. The Department based the proposed number of challenged ballots of 2,000 on the percentage of challenged ballots in previous referenda that was 1.5 to 2 percent of the number of voters

and doubled that figure to reflect approximately 4 percent. Upon further review, the Department agrees that the number of challenged ballots is likely to be greater than the original estimated number of 2,000, but is not persuaded it will be as high as 8,000.

The Department has reconsidered the Estimated Number of Responses per Respondent and has increased the number from an average of 1 to an average of 2 in section 5, Challenge of Voters. Therefore, the Department has changed the Estimated Number of Respondents from 2,000 to 4,000 in section 6, Proof of Eligibility. The Department has also reconsidered the Estimated Number of Respondents in section 7, Appealing a Challenge of Eligibility, and reduced the number from 2,000 in the proposed rule to 500. In the proposed rule the Department estimated that 2,000 producers whose votes would be challenged would appeal. However, upon review, the Department now estimates that all 2,000 producers challenged would not have been found to be ineligible. Recognizing this fact, the Department now believes that a smaller number of persons will be declared ineligible to vote and thus appeal. The Department has estimated the number of respondents to be 500.

The same commenter also suggested that the estimate of 25,000 voters may be too low. The Department estimated that 50,000 producers and importers would vote in the pork referendum and further estimated that 25,000 would vote in-person and 25,000 would vote absentee or by mail ballot. The Department agrees with the commenter that more than 25,000 voters should be expected in the referendum and thus continues to estimate that there will be approximately 50,000 voters. Accordingly, no change is made based upon this comment.

Background

The Act provides for the establishment of a coordinated program of promotion and research designed to strengthen the pork industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for pork and pork products. The program is financed by a pork checkoff assessment of 0.45 percent of the market value of domestic and imported hogs and pigs and an equivalent amount on imported pork and pork products. Pursuant to the Act, an Order was made effective on September 5, 1986, and the collection of assessments began on November 1, 1986.

The Act provides that at the request of a number of persons equal to at least

15 percent of persons who have been producers and importers during a representative period as determined by the Secretary, the Secretary shall conduct a referendum to determine whether the producers and importers favor the continuation of the Pork Checkoff Program. Based on statistical data reported by NASS in the December 29, 1998, issue of the "Hogs and Pigs" report and information from the 1997 Census, there were 98,892 producers who sold hogs or pigs in 1998. According to data submitted by U.S. Customs Service, in 1998, there were 1,017 importers of hogs, pigs, pork, or pork products. The total number of producers and importers who would be eligible to sign a petition was 99,909. Fifteen percent of 99,909 equals 14,986. Therefore, AMS determined that a petition containing 14,986 valid signatures was sufficient to request a referendum.

On May 24, 1999, a petition containing 19,043 names was submitted to AMS. AMS conducted a signature validation process to ensure that the petitioners were pork producers or importers during the representative period, January 1, 1997, to June 1, 1999, and signed the petition. However, the Department concluded that the validation process was vulnerable to criticism in a number of respects and that the Department cannot be certain of the exact number of valid signatures. Because many thousands of valid signatures were received, however, the Secretary determined that a referendum would be held at the Department's expense in the interest of fairness. Pork producers and importers have not voted on the continuation of the Pork Checkoff Program since the initial referendum in 1988.

The purpose of the final rule is to determine whether pork producers and importers favor continuation of the Order. Therefore, the question on the ballot will be: "Do you favor continuing the Pork Checkoff program? Yes or No." Support of the program by a majority of persons who pay assessments is essential to both the establishment and the continuation of this program. Assessment collection under the Order would be terminated not later than 30 days after the date it is determined that termination of the Order is favored by a majority of the producers and importers voting in the referendum. The Order would be terminated in an orderly manner, as soon as practical, after the date of such determination. The proceedings after termination are set forth in § 1230.85 of the Order.

The final rule sets forth procedures to be followed in conducting the

referendum, including definitions, representative period, supervision of the referendum, mail ballots, challenge of voters and appeals, in-person voting procedures, absentee voting procedures, importer voting procedures, reporting referendum results, and disposition of the ballots and records. FSA will assist in the conduct of the referendum by (1) Providing the polling places; (2) counting ballots; (3) determining the eligibility of challenged voters; and (4) reporting referendum results.

The proposed rule was published (65 FR 20861, April 18, 2000) with a request for comments to be submitted by May 18, 2000. The Department received 1,005 comments in a timely manner. In addition, 73 late comments were received. These comments generally reflected the substance of comments timely received. The bulk of the comments were submitted by individual hog producers. About 40 comments were received from organizations or associations representing hog producers, pork importers, and farmers. The comments have been posted on AMS' website at (<http://www.ams.usda.gov/lsg/mpb/pork/pkreftule.htm>).

The changes suggested by commenters are discussed below, along with the changes made by the Department upon further review of the proposed procedures for the conduct of the referendum. Also, the Department has made other minor changes for the purpose of clarity and accuracy. For the readers' convenience the discussion of comments is organized by the topic headings of the proposed rule.

Background

One commenter pointed out that an assessment of 0.45 percent of the market value not only applies to domestic hogs and pigs but also to imported market hogs and pigs. The proposed Order stated that an equivalent amount applied to imported market hogs and pigs. The commenter is correct. The 0.45 percent of market value applies to domestic and imported pigs and hogs. An assessment equivalent to 0.45 percent of market value applies only to imported pork and pork products. The commenter's recommended change has been incorporated in the final rule.

One commenter stated that the last statements in paragraph three concerning the Department's determination to hold a referendum are biased or "positioned" comments and should be deleted since the Department should maintain a neutral role. The Department does not agree. The statements are factual and are an integral part of the background information that explains why the

referendum is being held. This recommendation is not adopted.

One commenter pointed out that the Order has information concerning the proceedings after termination, suggesting that it should be referenced and included for producer knowledge in the final rule. The Department agrees. A reference to § 1230.85 in the Order concerning these proceedings has been included in the Background Section.

Definitions

Section 1230.608 Farm Service Agency State Committee

AMS and FSA reviewed the procedures for determining an appeal in § 1230.631(g) after the proposed rule was published. They agreed the appeals of the FSA County Committee's determination would be faxed to the Administrator of AMS for a final determination of voter eligibility rather than be sent to the FSA State Committee. For the purpose of this final rule, the FSA State Committee is not involved in the procedures for the conduct of the referendum. Consequently, the definition of FSA State Committee at § 1230.608 has been deleted and each following section has been renumbered.

Section 1230.615 Producer

Some commenters suggested that the definition of producer should be clarified by inserting "2 or more" after "animals" and suggested "and markets" be inserted after "produces." The Department finds that the suggestion that the production of two or more hogs is needed to qualify as a producer is not consistent with the language and intent of the Act and Order. The definition of producer in the proposed rule is consistent with the definition of a producer in the Act. The Act specifies no minimum number of hogs a person must own to be eligible to vote in the referendum. A person who produces one hog or pig in the United States for sale in commerce must pay the checkoff just as a person who produces more than one. Accordingly, this suggestion is not adopted. The commenter's suggestion to include "and markets" in the definition of producer is also not adopted. The Department has determined that this addition is not needed as the language of the definition from the Act "produces for sale in commerce" includes porcine animals that are marketed.

Section 1230.617 Referendum

One commenter suggested that the phrase "* * * continuation of the Order." should be replaced with

"ending the mandatory pork checkoff assessment program."

The Secretary in announcing that a referendum would be held stated "* * * it is appropriate and necessary to determine whether a majority of pork producers do in fact continue to support the checkoff." The Department has determined that the language in the proposed rule with some modification is appropriate and reflects the intent of this referendum. Accordingly, this suggestion is not adopted.

Section 1230.618 Representative Period

Numerous commenters supported the proposed representative period of 12-consecutive months prior to the referendum, which is the timeframe during which producers must have owned and sold hogs or pigs to be eligible to vote in the referendum. However, many commenters recommended changes in the length (both longer and shorter) of the representative period. Many commenters recommended lengthening the period by a varying number of years, including 2 years, 3 years, 4 years, and even to a much longer timeframe such as 12 years or since the beginning of the Pork Checkoff Program. These commenters contended that an extended period is necessary for a variety of reasons. The reasons given most often were to enable all producers who signed the CFF petition requesting a referendum on the Pork Checkoff Program to participate in the referendum; to permit producers who may have temporarily left the business due to the extremely low hog prices experienced in 1998 and 1999 to participate in the referendum; and to allow all producers who have paid the checkoff at some time in the past to participate in the referendum. In contrast, some commenters recommended shortening the representative period. These comments included limiting the representative period to the year 2000; to the period from April 18, 2000, until the referendum begins; and to requiring ownership of hogs on the date the producer votes in the referendum. These commenters emphasized the need for current producers, who will be paying the checkoff in the future, to determine whether the checkoff continues.

Some commenters recommended an earlier ending date for the representative period than the one included in the proposed rule. Their comments included ending the representative period on February 28, 2000 (the day the Secretary announced a pork referendum would be held); on April 18,

2000 (the day the proposed referendum rule was published); and the date the final referendum rule is published. These commenters expressed concern that questionable hog transactions could occur after these dates solely for the purpose of establishing a person's eligibility to vote in the referendum.

The Department has carefully considered these comments and recognizes the importance of this issue to all producers desiring to vote in the referendum. The Department has determined that the representative period will be the 12-consecutive month period prior to the beginning of absentee balloting for producers and mail balloting for importers. Producers who may have temporarily left the hog business in 1998 and 1999 and were interested in getting back into hog production due in part to significant capital investments in hog production facilities most likely would have since returned to the business due to higher hog prices (current price is approximately \$50/cwt) and low corn prices (current price is approximately \$2.00/bu).

The Department finds that the 1-year representative period is a period used by AMS in many other referenda and that the period will provide an opportunity for all pork producers presently engaged in producing and selling hogs and paying the checkoff assessments to determine whether the checkoff continues.

One commenter suggested that the exact dates of the representative period should be clear to producers, importers, and FSA representatives who will vote in the referendum or implement the referendum rules. The dates of the representative period are August 18, 1999, through August 17, 2000. These dates are set forth in the Dates section of this final rule and other sections, as applicable, as well as being included in the voting materials for all voters.

Section 1230.621 Voting Period

Numerous commenters recommended increasing the length of the in-person voting period. These commenters suggested that the 2-day in-person voting period be extended by 1 week to as many as 8 weeks. The commenters contend that the longer time period is needed to accommodate producers' busy schedules and to promote maximum eligible producer participation. Many other commenters supported the 2-day in-person voting period.

The Department recognizes the need for producers to have ample time to participate in the referendum and is extending the 2-day in-person voting

period to 3 days. The Department believes a 3-day in-person voting period in conjunction with a 32-day absentee voting period will give producers who want to vote ample time to cast their ballot. During the 32-day absentee voting period, producers may request absentee ballots in-person, by telephone, facsimile, or by mail. This final rule permits producers to obtain an absentee ballot and vote at the county FSA office during any business day during the 32-day absentee voting period. Any producer who is concerned about being able to vote during the 3-day in-person voting period may use the absentee voting option. Accordingly, the suggestion for a longer in-person voting period is accepted in part by extending the in-person voting period from 2 days to 3 days. Section 1230.621 has been revised to reflect the expanded voting period. References in other sections to the length of the in-person voting period have been changed as appropriate.

Section 1230.622 General

A number of commenters questioned the legitimacy of holding a referendum expressing their belief that there is no authority in the law, the Order, or the regulations to call for a referendum.

The Department disagrees. The Department has authority to conduct a referendum to determine if producers do in fact wish to continue to pay assessments to fund the Pork Checkoff Program.

Section 1230.624 Eligibility

One commenter recommended revising § 1230.625 so that groups of family members raising hogs are not presumed to be selling hogs under one business entity. Individual family members should be presumed to be individual producers unless there is evidence that all hogs are owned and sold under a single business entity. The language in § 1230.624 of this final rule (§ 1230.625 in the proposed rule) makes it clear that any member of a group, *i.e.*, member of a family may register to vote if he or she sells hogs or pigs in his or her own name. Accordingly, this suggestion is not adopted.

The same commenter also recommended that the terms "joint tenants" and "tenants in common" refer to ownership in real estate interests, not personal property interests such as hogs. This comment has merit. The words "joint tenants" and "tenants in common" have been deleted from § 1230.624(a)(2) and (a)(3). These terms have also been deleted from the voting registration and certification forms.

Numerous comments supported either "one hog or pig" or "two or more hogs

or pigs" as the number that a producer must own and sell to be eligible to vote. Those supporting two or more hogs and pigs assert that a producer as defined in the Act, is a person who produces porcine animals in the United States for sale in commerce and argue that "porcine animals" is plural and thus means two or more hogs or pigs.

Those who support the need to own only one hog or pig to be eligible to vote argue that producers who produce one hog or pig for sale in commerce must pay the assessment just as producers who produce more than one hog or pig. The Department agrees. All producers subject to paying the checkoff including those producing and selling one hog or pig are eligible to vote in this referendum. Accordingly, the Department has amended § 1230.624(a)(1) to clarify that producers owning and selling at least one hog or pig are eligible to vote.

Numerous commenters suggested that there should be a minimum voting age. The majority of commenters recommended 18 years as the minimum age. The commenters point out that a person must be 18 years old to vote in general elections in the United States and that younger voters in general would not understand the implications of their vote.

The Act (in defining producers) does not differentiate between producers by age. Younger producers are subject to assessment the same as producers 18 years of age and older. Therefore, the suggestion for a minimum voting age of 18 is not adopted. However, individual producers must be old enough to complete the required registration and certification form and mark the ballot since no proxy voting is permitted for individual producers.

Several commenters recommended the words "and markets" be added after "produces" in both § 1230.624(a)(1) and § 1230.624(a)(2). As mentioned previously, in order to prove that a person whose eligibility to vote is challenged has met the definition of a producer, it will be necessary to provide a sales document, tax records, or other similar documents showing that the producer owned and sold hogs or pigs. The Department believes that producers will understand the terms "owned and sold" better than "marketed." Therefore, this suggestion is not adopted.

Several commenters expressed opinions on the eligibility to vote of individuals or business entities that raise hogs or pigs through production contracts but who do not own the hogs or pigs they raise. The commenters asserted that individuals or business entities that raise hogs or pigs through

production contracts but who do not own the hogs or pigs they raise should not be eligible to vote. Other commenters argued that these individuals or business entities are often more dependent on the hog industry for a major share of their income than many small diversified farming operations that have hogs as a minor enterprise and thus should be eligible to vote. Likewise, other commenters argued that full-time employees in hog operations are fully dependent on the viability of these hog businesses and, thus, should be eligible to vote.

Individuals or business entities that raise hogs or pigs under production contracts do not take ownership of the hogs and pigs and sell them. They are not subject to paying assessments when the hogs or pigs are sold. Therefore, contract producers are not eligible to vote in this referendum, unless they have produced and sold pigs or hogs in their own names during the representative period. Full-time employees of hog enterprises are not eligible to vote as a result of employment in the hog industry. Eligibility to vote is based on the ownership and sale of hogs or pigs. Accordingly, the suggestions that contract growers of hogs or pigs and employees of hog operations be allowed to vote based on their involvement in the industry is not adopted.

Section 1230.625 Time and Place of Registration and Voting.

A large number of commenters expressed opinions on the length of the producer voting period. These commenters suggested that the 2-day in-person voting period be extended by 1 week to 8 weeks. Commenters contend that the longer time period is needed to accommodate producers' busy schedules and to promote maximum eligible producer participation. Many other commenters supported the 2-day in-person voting period.

The Department recognizes the need for producers to have ample time to participate in the referendum and is extending the 2-day in-person voting period to 3 days. The Department believes a 3-day in-person voting period in conjunction with a 32-day absentee voting period will give producers who want to vote ample time to cast their ballot. During the 32-day absentee voting period, producers may request absentee ballots in-person, by telephone, facsimile, or by mail. This final rule permits producers to obtain an absentee ballot and vote at the county FSA office during any business day during the 32-day absentee voting period. Any producer who is concerned

about being able to vote during the 3-day in-person period may use the absentee voting option. Accordingly, the suggestion for a longer in-person voting period is accepted in part by extending the in-person voting period from 2 days to 3 days.

Commenters in general were supportive of holding the referendum for producers at county FSA offices. County FSA offices will conduct the referendum for producers and the FSA headquarters office will conduct the referendum for importers as proposed.

A number of commenters requested that ballots be mailed by the Department to producers such as those producers who signed the petition for a pork referendum and those who received Small Hog Operation Payment (SHOP) program payments. Other commenters agreed with the proposed 2-day in-person voting period and 30-day absentee voting period, citing that it was consistent with the procedures of the initial referendum. They also expressed their belief that the Department has no current comprehensive list of eligible producers and providing ballots to some groups of producers would be inequitable and unfair.

The Department does not have a list of the names and addresses of all pork producers in the United States. Further, to rely solely on lists that do not identify the names and addresses of all hog producers in the United States to mail ballots to producers would not be equitable. Thus, the recommendation to mail ballots to producers who signed the petition or other lists of producers is not adopted. Producers who wish to vote by mail ballot can obtain absentee ballots from county FSA offices.

One commenter suggested that the final rule should clarify that in-person registration and voting will be carried out "on-site" at FSA offices. The commenter suggested the rule was not clear whether a person could pickup a ballot, leave the office, and return with a completed ballot. The intent of the rule is that in-person voting will be carried out "on-site." The suggestion is adopted and §1230.625 has been revised accordingly.

Section 1230.626 Facilities for Registering and Voting

Many commenters requested that absentee ballots be made available if requested by telephone or electronic mail.

The Department has determined that in the interest of making voting more convenient for producers, absentee ballots will be made available to producers if requested by telephone. Thus, the suggestion to provide ballots

by telephone is adopted and incorporated into this final rule. Obtaining importer ballots by telephone is addressed in the discussion of comments on §1230.629 registration and voting procedures for importers.

The Department has determined that not all county FSA offices can receive electronic mail from sources outside of the Department. Thus, the suggestion that voters could request ballots by electronic mail is not adopted.

Several commenters recommended that the final rule clarify the fact that voting materials would not be faxed to participants due to the nature of materials that include special envelopes needed for a valid ballot. This clarification is made in §1230.626 of the final rule by stating that ballot materials requested by telephone, mail, and facsimile will be provided to the requestor by mail.

Several commenters suggested that it should be made clear that county FSA offices will keep a list of absentee ballot requests and will match it with the returned voting materials to ensure only those registered are considered to be valid ballots. This was the intent of the proposed rule and is the intent of this final rule. Accordingly, §1230.633 canvassing ballots is revised to emphasize this requirement. Instructions issued to FSA county offices also will reflect this requirement.

Section 1230.627 Registration Form and Ballot

Several commenters recommended that the ballot question be changed and the certification statement should be more prominently displayed on the voting forms. This suggestion has been adopted. The ballot and ballot question as well as the certification statement have been revised to make them easier to use and understand. The ballot portions of the registration and certification forms have been redesigned so they will appear more prominent.

Many commenters had a wide range of recommendations on the wording of the ballot question. Some commenters recommended the ballot read as follows: "Do you vote to end the mandatory Pork Checkoff assessment program?" These commenters believe that the ballot question must emphasize that the referendum is about ending the mandatory Pork Checkoff Program.

Other commenters recommended that the language emphasize that the purpose of the referendum is to determine whether the Order is to continue and should be exactly the same as the language used in the 1988 referendum.

Some commenters were concerned that the proposed language could confuse some voters since these voters might not understand that a "No" vote in the referendum would mean that both the Pork Checkoff Program and the Order would be terminated.

To make the ballot question as simple and straightforward as possible, the Department has determined that the ballot question will read as follows: "Do you favor continuing the Pork Checkoff program?" Therefore, the specific language recommended by the various commenters is not adopted.

Commenters suggested that the instructions to voters on the ballot forms and the registration and certification statements be amended and clarified to: (1) Clarify the difference between voting as an individual producer and voting as a representative of a corporation or other business entity; (2) clarify that contract growers are not eligible to vote; (3) clarify eligibility requirements; and (4) strengthen the language in the certification statement.

The Department finds that these suggestions have merit and these forms have been revised to incorporate each of these suggestions. In addition, there will be handouts given to voters at the county FSA offices for easy reference on eligibility, challenges, and appeals.

One commenter recommended that there needed to be instructions on how to complete the county blank on the registration forms as it is confusing because the form did not indicate what county a voter is supposed to enter, *i.e.*, county of residence, county voting in, etc. The Department upon further review finds that county has little significance on the form and, therefore the requirement for providing county, has been deleted from this final rule and the forms for the registration and certification of voters.

Some commenters suggested that the In-Person Voter Registration List (Form LS-75) be amended to provide the address of the voter. They assert that in the event that multiple producers with the same last name are voting, having the address would facilitate the challenge process by helping to distinguish between persons with the same last name. The Department agrees. Recording of the voter's address in addition to his or her name on Form LS-75 would help distinguish between producers having the same last name for purposes of challenging voters. This suggestion is adopted. The Department is also requiring that the address of a voting business entity be added to Form LS-75.

Section 1230.628 Registration and Voting Procedures for Producers

Many commenters registered opinions on both sides of the issue of whether producers should be required to provide documentation of eligibility to vote. The proposed rule did not require documentation to vote but provided for certification of eligibility and a challenge process. Many commenters suggested that an up-front documentation requirement would eliminate time-consuming challenges, give more integrity to the process, and better ensure equal treatment among all voters. They assert that large numbers of challenges are likely and that resolution of the challenges would be much more cumbersome and time consuming than requiring documentation up-front. Other commenters were opposed to up-front documentation of eligibility and supported the challenge process. These commenters believe that many eligible voters would not vote if required to provide documentation of eligibility up-front and believe that the challenge procedures would adequately protect the integrity of the process.

The Department has carefully considered the pros and cons of up-front documentation. The Department believes that requiring a person voting in this referendum to sign a certification statement attesting to the fact that they are a producer and that they comply with the eligibility requirement when they vote coupled with having to provide documentation to prove eligibility as a producer if challenged protects the integrity of the voting process. This suggestion is not adopted.

One commenter recommended that the word "on-site" be added to the last sentence in § 1230.628(a)(2) to clarify that in-person voters must complete the voting procedure before leaving the FSA county office. The proposed wording is consistent with the intent of the section and provides clarification. Therefore, the recommendation has been adopted and incorporated in the language of this section in the final rule.

One commenter recommended that a procedure be incorporated in this final rule to allow producers to obtain a clean package of voting materials if they spoiled a ballot by merely returning the initial package received whether it was received in-person or by mail. The In-person Ballot, the Absentee Ballot, and the Importer Mail Ballot only require that a person check "yes" or "no." The ballot portion of the forms shown in the appendix in the proposed rule have been redesigned and the ballot question simplified. The Department believes that this redesign and simplification

will make it easier for producers to clearly mark their choice on the ballot. Accordingly, this suggestion is not adopted.

Some commenters recommended that changes to § 1230.628(b)(3) should include the actual dates ballots and registration forms could be requested rather than the term "during a specified time period." When the Department published the proposed rule, the dates that the referendum would be held had not been decided. Consequently, actual dates that ballots and registration forms could be requested were not included in the proposed rule. However, the Department has established the date for the referendum and other dates associated with the referendum and has included these dates in appropriate sections in this final rule and on the registration and ballot forms.

One commenter recommended that language confirm that the absentee ballot materials could be picked up in-person at county FSA offices as well as received by mail upon request. Section 1230.628(b)(2) registration and voting procedures states in part " * * * he or she [the producer] may request an absentee voting package by telephone, by mail, by facsimile, or pick it up in-person from the county FSA office * * * " The Department finds the present language clearly states the ways in which producers can obtain absentee ballots, including by mail or by picking them up in-person. For this reason, this suggestion is not adopted.

One commenter recommended that § 1230.628(b)(6) be amended to stipulate that the county FSA office has responsibility to check that no absentee ballot is returned that was not duly requested and logged on the Absentee Voter Request List (Form LS-74). The Department finds no need to include such language in this section as this requirement is covered in § 1230.633 canvassing ballots and is in the instructions to FSA county offices.

Some commenters recommended that § 1230.628(b)(7) be clarified to specify the deadline for receipt of absentee ballots delivered in-person. This suggestion has merit and is included in the final rule in § 1230.628(b)(6) for clarity.

Section 1230.629 Registration and Voting Procedures for Importers

Some commenters recommended that the period for importer voting be the same as the total period for producer voting including absentee and in-person voting. This was the intent of the proposed rule and this final rule emphasizes that the same 35-day voting

period is provided for both producer and importer voting.

One commenter recommended that importers' votes should be weighted to equal the percent of total assessment collections attributed to importers. There is no provision in the Act that permits weighted voting based on the amount of annual assessment. Eligibility to vote is based on owning and selling one or more hogs or pigs or importing hogs, pigs, pork, or pork products during the representative period and each eligible individual and each eligible business entity is entitled to cast one vote.

Consistent with the requirements of the Act, the results of the referendum will be determined by a majority of producers and importers casting valid ballots. Thus, the recommendation for weighted voting based on the level of contributions to the Pork Checkoff Program is not adopted.

Several commenters requested that ballots be available if requested by telephone by producers or importers. The Department has determined that producers and importers can request ballot materials by telephone. Section 1230.628(b) and (c) of the final rule have been amended to provide for producers to request absentee voting materials by telephone and for importers to request mail ballots by telephone.

Section 1230.630 List of Registered Voters

One commenter recommended that the Importer Ballot Request Lists (Form LS-77) be posted for public inspection just as the producer absentee and in-person lists are posted and that there be a provision for the challenge of importers.

Unlike for producer voting, documentation of an individual importer's or importer entities' eligibility to vote is required to obtain a ballot package. FSA employees will maintain an Importer Ballot Request List and will check the returned voting materials against the list. FSA officials and AMS officials will review the U.S. Custom Form 7501 to ascertain that importers and importer entities are eligible to vote. The Department concludes there is no need for posting the names of importers or importer entities who have been declared eligible to vote.

Several commenters recommended that only producers who actually vote be subject to challenge and that absentee voters' names be posted as their absentee ballots are received. In § 1230.631(c) the language of the proposed and final rules clearly states: "Absentee ballots have to be received in

the county FSA office before a producer's vote can be challenged." The Absentee Voter Request List will contain the name and address of producers and producer entities requesting absentee ballots. The date that each absentee ballot is received in the county FSA office will be entered for each name. The list will be posted in the county FSA office beginning on the first day of the in-person voting period. Producers who requested absentee ballots have until close of business on the 5th business day after the end of the in-person voting period, for absentee ballots mailed on the last day of the in-person voting period to arrive at FSA county offices by mail. The names of those producers who do not have a date of receipt of their ballot by their name will remain on the list for that 5-day period. To do otherwise, would necessitate county FSA employees maintaining separate lists that will increase their workload and increase the chance for errors. In § 1230.630(a) the language of the proposed and final rules clearly states: "Absentee ballots arriving after the Absentee Voter Request List is first posted will be recorded on the Absentee Voter Request List each day." The Department believes this final rule adequately addresses the posting of the Absentee Voter Request List. These two suggestions are not adopted.

Section 1230.631 Challenge of Voters

Some commenters suggested that the challenge period should be extended from the proposed 6 business days to 7 or 10 business days after the last day of in-person voting. They contend that the proposed challenge period is unreasonably short because absentee ballots may not arrive at the county FSA office until 5 business days after the close of voting resulting in only 1 day to challenge the ballots of absentee voters. The Department has determined that this suggestion has merit and will facilitate a person's review of the Absentee Voter Request List. Accordingly, § 1280.631 has been revised to show the challenge period has been extended from 6 to 7 business days after the last day of in-person voting. This coupled with the 3-day in-person voting period will provide a total of 10 days to review these two voter lists and submit challenges.

One commenter suggested that county offices should provide a standard challenge form for a person to complete when challenging a producer's eligibility to vote. The Department does not agree. The information required for challenging a producer is minimal and each challenge of a voter's ballot must

be made on a separate sheet of paper and signed. Thus, the Department believes that a form is not necessary. This suggestion has not been adopted.

One commenter recommended that a person challenging a ballot should be required to state in-writing specific reasons why he or she believes that the person challenged does not meet the eligibility requirements to vote. They further recommended that a person challenging a ballot should be required to sign a certification statement that he or she has good reason for challenging the voter. While the Department believes that challengers should have a good reason for challenging a person's eligibility to vote and discourages frivolous challenges, the Department does not believe it is necessary to require challengers to give specific reasons for challenges or to sign a certification statement that he or she has good reason for challenging the voter. Therefore, the suggestion is not adopted.

Some commenters suggested that the final rule should make it clear that the identity of the challenger should remain confidential. The Department agrees. Therefore, this suggestion is adopted and appropriate language has been added to § 1230.631 of this final rule.

Some commenters recommended that all challenged producers be required to provide documentation of eligibility. They assert that this is necessary to ensure valid proof of eligibility and equitable treatment of all persons challenged. Other commenters recommended that the FSA County Committee use its own knowledge, records, and other available information to resolve challenges, whenever possible, to minimize the burden on challenged producers. The Department agrees that requiring all voters whose ballots have been challenged to provide documentation that they have sold one or more hogs will provide for increased uniformity and fairness in the resolution of challenges.

To incorporate this revision into the challenge resolution process, a new subsection (d) notification of challenges has been added to § 1230.631 challenge of votes. Notifying all challenged producers that they have been challenged and providing time for producers to provide documentation of eligibility once notified, will add 10 business days to the challenge resolution process, but it will be fair to all challenged producers. As a result of the 10 additional business day change and the additional day for challenges discussed earlier, a determination of eligibility will now be made no later than 22 business days after the last day of in-person voting rather than the 11

business days after the last day of in-person voting permitted in the proposed rule.

The proposed rule provided for the FSA State committees to resolve appeals. After the proposed rule was published, AMS and FSA agreed that appeals of the FSA County Committee's determinations would be faxed to the Administrator, AMS, for a final determination of eligibility rather than be sent to the State committees. When appeals of the FSA County Committee's determinations are submitted to the Administrator of AMS, the Administrator will review the challenge to determine whether the FSA County Committee conducted a full and impartial review of the information presented to correctly resolve the original challenge. This change was made to provide increased consistency in the determination of appeals and to minimize the workload and costs incurred at the FSA State offices. Section 1280.631 of this final rule has been modified accordingly.

One commenter suggested that the referendum rule should provide objective standards for deciding challenges including documentation. Documentation is being required in the final rule to resolve all challenges and examples of the types of documentation that will be acceptable are included in the final rule, posted in county FSA offices, and listed in FSA's instructions to county offices. Thus, changes have been made to incorporate the concepts proposed in this recommendation.

Section 1230.633 Canvassing Ballots

One commenter recommended that by the time of in-person voting, FSA county offices should have posted the date, place, and time that ballots will be tabulated so that interested parties can observe. This commenter also suggested that the results be made public at the time of counting and be reportable to interested parties.

The Department will allow interested parties to observe the counting of ballots. The ballots will be counted on the day following the end of the challenge resolution process which will be November 29, 2000. Section 1230.633 has been revised to include the date the ballots will be counted and indicate during normal business hours. The date and time the county FSA offices will count the ballots will be posted. However, to minimize speculation on the results of the referendum, the county level and State level results will not be made available until the Secretary has announced the results of the referendum.

Section 1230.634 FSA County Report

One commenter recommended that time specific reporting dates for reporting county office results should be included in the final rule. The Department finds no compelling reason to have such requirements in the final rule. The results will be reported from the county level, to the State level, and to the national level in a timely manner and in accordance with FSA instructions, once all challenges are resolved. This suggestion is not adopted.

Section 1230.635 FSA State Office Report

One commenter recommended that specific reporting dates for reporting State results as well as a report of results on a county-by-county basis should be included in the final rule. The Department finds no compelling reason to have such requirements in the final rule. The results will be reported from the State level to the national level in a timely manner in accordance with FSA instructions once all challenges are resolved. This suggestion is not adopted.

Section 1230.636 Results of the Referendum

Some commenters recommended that results be announced within 2 weeks of the vote. With 7 business days after the in-person voting period provided for challenges and with a lengthy challenge resolution process including provisions for an appeal to the Administrator of AMS, the results of the referendum will not be available within the time period recommended. This suggestion is not adopted.

Section 1230.637 Disposition of Ballots and Records

One commenter recommended that AMS maintain accurate records of the vote that would be made available in the event the vote is challenged. The proposed and final rule provide that the FSA County Executive Director maintain all referendum records for at least 12 months and longer if notified to do so by the Administrator of FSA. Any challenge of referendum results would likely occur within less than 12 months of the referendum. No change in the rule appears to be necessary to accommodate this suggestion.

General Comments

Some commenters recommended a section be added in the final rule to cover false statements. They recommended the following language:

False Statements—Persons who participate in the referendum who

knowingly or willfully make false statements on documents related to the referendum may be fined up to \$10,000, imprisoned up to 5 years or both penalties applied (19 U.S.C. 1001 *et seq.*). Notice of this penalty shall be displayed at the FSA polling site and on related documents for registration and voting.

The Department has determined it is not necessary to have this language in the final rule. Language concerning the penalties for making false statements is displayed prominently on the voting forms and will be posted at the FSA polling sites. Providing information about penalties for false statements in this manner is deemed to be sufficient and so the recommendation to incorporate it in the final rule is not adopted.

One commenter recommended that procedures be added to prevent a company with multiple production locations from voting in multiple counties. The voting materials clearly indicate that only an authorized individual can cast the one vote a business entity is entitled to cast. In addition, as indicated above the penalty for false statements is clearly displayed in conjunction with the producers' certification of eligibility to vote. Thus, no changes have been made as a result of this comment.

Pursuant to the provisions in 5 U.S.C. 553 *et seq.*, good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because postponing the final rule until 30 days after publication would make the rule effective after the date pork producers can request absentee ballots.

Referendum Order

It is hereby directed that a referendum be conducted among eligible pork producers who owned and sold one or more hogs or pigs and importers who imported pigs, hogs, pork, or pork products to determine whether the Order will continue. Producer in-person voting in the referendum will be on September 19, 20, 21, 2000, at county FSA offices. Producer absentee ballots will be available at those offices from August 18, 2000, through September 18, 2000. Importers can obtain ballots from the FSA headquarters office in Washington, DC, from August 18, 2000, through September 21, 2000. The representative period to establish voter eligibility will be the period from August 18, 1999, through August 17, 2000.

In summary, this final rule adopts provisions of the April 18, 2000, proposed rule with the changes

discussed herein and with other minor changes made for purposes of clarity and accuracy.

List of Subjects in 7 CFR Part 1230

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

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

PART 1230—PORK PROMOTION, RESEARCH, AND INFORMATION

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

Authority: 7 U.S.C. 4801–4819.

2. A new subpart E is added to read as follows:

Subpart E—Procedures for the Conduct of Referendum

Definitions

Sec.

- 1230.601 Act.
- 1230.602 Administrator, AMS.
- 1230.603 Administrator, FSA.
- 1230.604 Department.
- 1230.605 Farm Service Agency.
- 1230.606 Farm Service Agency County Committee.
- 1230.607 Farm Service Agency County Executive Director.
- 1230.608 Imported porcine animals, pork, and pork products.
- 1230.609 Importer.
- 1230.610 Order.
- 1230.611 Porcine animal.
- 1230.612 Person.
- 1230.613 Pork.
- 1230.614 Pork product.
- 1230.615 Producer.
- 1230.616 Public notice.
- 1230.617 Referendum.
- 1230.618 Representative period.
- 1230.619 Secretary.
- 1230.620 State.
- 1230.621 Voting period.

Referendum

- 1230.622 General.
- 1230.623 Supervision of referendum.
- 1230.624 Eligibility.
- 1230.625 Time and place of registration and voting.
- 1230.626 Facilities for registering and voting.
- 1230.627 Registration form and ballot.
- 1230.628 Registration and voting procedures for producers.
- 1230.629 Registration and voting procedures for importers.
- 1230.630 List of registered voters.
- 1230.631 Challenge of votes.
- 1230.632 Receiving ballots.
- 1230.633 Canvassing ballots.
- 1230.634 FSA county office report.
- 1230.635 FSA State office report.
- 1230.636 Results of the referendum.

- 1230.637 Disposition of ballots and records.
- 1230.638 Instructions and forms.

Subpart E—Procedures for the Conduct of Referendum

Definitions

§ 1230.601 Act.

The term *Act* means the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) and any amendments thereto.

§ 1230.602 Administrator, AMS.

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

§ 1230.603 Administrator, FSA.

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

§ 1230.604 Department.

The term *Department* means the United States Department of Agriculture.

§ 1280.605 Farm Service Agency.

The term *Farm Service Agency* also referred to as “FSA” means the Farm Service Agency of the Department.

§ 1230.606 Farm Service Agency County Committee.

The term *Farm Service Agency County Committee*, also referred to as the *FSA County Committee* or *COC*, means the group of persons within a county elected to act as the Farm Service Agency County Committee.

§ 1230.607 Farm Service Agency County Executive Director.

The term *Farm Service Agency County Executive Director* also referred to as the *CED*, means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and be responsible for the day-to-day operations of the FSA county office or the person acting in such capacity.

§ 1230.608 Imported porcine animals, pork, and pork products.

The term *Imported porcine animals, pork, and pork products* means those animals, pork, or pork products that are imported into the United States and subject to assessment under the harmonized tariff schedule numbers

identified in § 1230.110 of the regulations.

§ 1230.609 Importer.

The term *Importer* means a person who imports porcine animals, pork, or pork products into the United States.

§ 1280.610 Order.

The term *Order* means the Pork Promotion, Research, and Consumer Information Order.

§ 1230.611 Porcine animal.

The term *Porcine animal* means a swine, that is raised:

(a) As a feeder pig, that is, a young pig sold to another person to be finished over a period of more than 1 month for slaughtering;

(b) For breeding purposes as seedstock and included in the breeding herd; and

(c) As a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

§ 1230.612 Person.

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

§ 1230.613 Pork.

The term *Pork* means the flesh of a porcine animal.

§ 1230.614 Pork product.

The term *Pork product* means an edible product processed in whole or in part from pork.

§ 1230.615 Producer.

The term *Producer* means a person who produces porcine animals in the United States for sale in commerce.

§ 1230.616 Public notice.

The term *Public notice* means information regarding a referendum that would be provided by the Secretary, such as press releases, newspapers, electronic media, FSA county newsletters, and the like. Such notice would contain the referendum date and location, registration and voting requirements, rules regarding absentee voting, and other pertinent information.

§ 1230.617 Referendum.

The term *Referendum* means any referendum to be conducted by the Secretary pursuant to the Act whereby persons who have been producers and importers during a representative period would be given the opportunity to vote to determine whether producers and importers favor continuation of the Order.

§ 1230.618 Representative period.

The term *Representative period* means the 12-consecutive months prior to the first day of absentee and importer voting in the referendum. The representative period for this referendum is August 18, 1999, through August 17, 2000.

§ 1230.619 Secretary.

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

§ 1230.620 State.

The term *State* means each of the 50 States.

§ 1230.621 Voting period.

The term *Voting period* means the 3-consecutive business day period for in-person voting.

Referendum**§ 1230.622 General.**

(a) A referendum to determine whether eligible pork producers and importers favor continuation of the Pork Checkoff Program will be conducted in accordance with this subpart.

(b) The Pork Checkoff Program will be terminated only if a majority of producers and importers voting in the referendum favor such termination.

(c) The referendum will be conducted at the county FSA offices for producers and at FSA headquarters office in Washington, DC, for importers.

§ 1230.623 Supervision of referendum.

The Administrator, AMS, will be responsible for conducting the referendum in accordance with this subpart.

§ 1230.624 Eligibility.

(a) Eligible producers and importers. Persons eligible to register and vote in the referendum include:

(1) Individual Producers. Each individual that owns and sells at least one hog or pig during the representative period and does so in his or her own name is entitled to cast one ballot.

(2) Producers who are a corporation or other entity. Each corporation or other entity that owns and sells at least one hog or pig during the representative period is entitled to cast one ballot. A group of individuals, such as members of a family, a partnership, owners of community property, or a corporation engaged in the production of hogs and pigs will be entitled to only one vote; provided, however, that any member of

a group may register to vote as a producer if he or she sells at least one hog or pig in his or her own name.

(3) Importers. Each importer who imports hogs, pigs, pork, or pork products during the representative period is entitled to cast one ballot. A group of individuals, such as members of a family, a partnership, or a corporation engaged in the importation of hogs, pigs, pork, or pork products will be entitled to only one vote; provided, however, that any member of a group may register to vote as a importer if he or she imports hogs, pigs, pork, or pork products in his or her own name.

(b) Proxy registration and voting. Proxy registration and voting is not authorized, except that an officer or employee of a corporate producer or importer, or any guardian, administrator, executor, or trustee of a producer's or importer's estate, or an authorized representative of any eligible producer or importer (other than an individual producer or importer), such as a corporation or partnership, may register and cast a ballot on behalf of that entity. Any individual who registers to vote in the referendum on behalf of any eligible producer or importer corporation or other entity must certify that he or she is authorized to take such action.

§ 1230.625 Time and place of registration and voting.

(a) Producers. The referendum shall be held for 3-consecutive days on September 19, 20, 21, 2000. Eligible producers shall register and vote on-site following the procedures in 1230.628. Producers shall register and vote during the normal business hours of each county FSA office or request absentee ballots from the county FSA offices by mail, telephone, or facsimile, or pick up an absentee ballot in-person. The absentee voting period shall be from August 18, 2000, through September 21, 2000.

(b) Importers. Importer voting shall take place during the same time period provided producers for in-person and absentee voting in the referendum. The referendum shall be conducted by mail ballot by the FSA headquarters office in Washington, DC, between August 18, 2000, through September 21, 2000.

§ 1230.626 Facilities for registering and voting.

(a) Producers. Each county FSA office shall provide:

(1) Adequate facilities and space to permit producers of hogs and pigs to register and to mark their ballots in secret;

(2) A sealed box or other designated receptacle for registration forms and ballots that is kept under observation during office hours and secured at all times; and

(3) Copies of the Order for review.

(b) Absentee ballots. Each FSA county office shall provide each producer an absentee ballot package upon request. Producers can pick up an absentee ballot in-person or request it by telephone, mail, or facsimile. The FSA county office will provide absentee ballots by mail for all requests received by telephone, mail, or facsimile. The FSA county office shall record date of receipt of the "Pork Referendum" envelope containing the completed absentee ballot on the Absentee Voter Request List and place it unopened in a secure ballot box.

(c) Importers. The FSA headquarters office in Washington, DC, will:

(1) Mail ballot packages to eligible importers upon request;

(2) Have a sealed box or other designated receptacle for registration forms and ballots that is kept under observation during office hours and secured at all times; and

(3) Mail copies of the Order to importers if requested by mail, telephone, or facsimile. Importers can also pickup a ballot in-person.

§ 1230.627 Registration form and ballot.

(a) *Producers.* (1) A ballot (Form LS-72) and combined registration and certification form (Form LS-72-2) will be used for voting in-person. The information required on the registration form includes name, address, and telephone number. Form LS-72-2 also contains the certification statement referenced in § 1230.628. The ballot will require producers to check a "yes" or "no."

(2) A combined registration and voting form (Form LS-73) will be used for absentee voting. The information required on this combined registration and voting form includes name, address, and telephone number. Form LS-73 also contains the certification statement referenced in § 1230.628. The ballot will require producers to check "yes" or "no."

(b) *Importers.* A combined registration and ballot form (Form LS-76) will be used for importer voting. The information required on this combined registration and ballot form includes name, address, and telephone number. Form LS-76 also contains the certification statement referenced in § 1230.629. The ballot will require importers to check "yes" or "no."

§ 1230.628 Registration and voting procedures for producers.**(a) Registering and voting in-person.**

(1) Each eligible producer who wants to vote whether as an individual or as a representative of a corporation or other entity shall register during the 3-day in-person voting period at the county FSA office where FSA maintains and processes the individual producer's or corporation's or other entities' administrative farm records. A producer voting as an individual or as a representative of a corporation or other entity not participating in FSA programs, shall register and vote in the county FSA office serving the county where the individual producer or corporation or other entity owns hogs or pigs. An individual or an authorized representative of a corporation or other entity who owns hogs or pigs in more than one county shall register and vote in the FSA county office where the individual or corporation or other entity does most of their business. Producers shall be required to record on the In-Person Voter Registration List (Form LS-75) their name and address, and if applicable, the name and address of the corporation or other entity they represent before they can receive a registration form and ballot. To register, producers shall complete the in-person registration and certification form (Form LS-72-2) and certify that:

(i) They or the corporation or other entity they represent were producers during the specified representative period; and

(ii) The person voting on behalf of a corporation or other entity referred to in § 1230.612 is authorized to do so.

(2) Each eligible producer who has not voted by means of an absentee ballot may cast a ballot in-person at the location and time set forth in § 1230.625 and on September 19, 20, 21, 2000. Eligible producers who record their names and addresses and, if applicable, the name and address of the corporation or other entity they are authorized to represent on the In-Person Voter Registration List (Form LS-75) will receive a combined registration and certification form printed on an envelope (Form LS-72-2) and a ballot (Form LS-72). Producers will enter the information requested on the combined registration and certification form/envelope (Form LS-72-2) as indicated above. Producers will then mark their ballots to indicate "yes" or "no." Producers will place their completed ballots in an envelope marked "Pork Ballot" (Form LS-72-1), seal and place it in the completed and signed registration form/envelope marked "Pork Referendum" (Form LS-72-2),

seal that envelope and personally place it in a box marked "Ballot Box" or other designated receptacle. Voting will be conducted on-site under the supervision of the county FSA County Executive Director (CED).

(b) *Absentee voting.* (1) Eligible producers who are unable to vote in-person may request an absentee voting package consisting of a combined registration and absentee ballot form (Form LS-73) and two envelopes—one marked "Pork Ballot" (Form LS-72-1) and the other marked "Pork Referendum" (Form LS-73-1) by mail, telephone, facsimile, or by picking up one in-person from the county FSA office where FSA maintains and processes the producer's administrative farm records.

(2) If a producer, whether requesting an absentee ballot as an individual or as an authorized representative of a corporation or other entity that does not participate in FSA programs, and therefore does not have administrative records at a county FSA office, he or she may request an absentee voting package by telephone, mail, facsimile, or pick it up in-person from the county FSA office serving the county where the individual or corporation or other entity owns hogs or pigs. An individual or authorized representative of a corporation or other entity, who owns hogs or pigs in more than one county can request an absentee ballot from the county FSA office where the producer or corporation or other entity does most of their business.

(3) An absentee voting package will be mailed to producers by the FSA CED to the address provided by the prospective voter. Only one absentee registration form and absentee ballot will be provided to each eligible producer. The absentee ballots and registration forms may be requested during August 1, 2000, through September 18, 2000.

(4) The county FSA office will enter on the Absentee Voter Request List (Form LS-74) the name and address of the individual or corporation or other entity requesting an absentee ballot and the date the forms were requested.

(5) To register, eligible producers shall complete and sign the combined registration and certification form and absentee ballot (Form LS-73) and certify that:

(i) They or the corporation or other entity they represent were producers during the specified representative period;

(ii) If voting on behalf of a corporation or other entity referred to in § 1230.612, they are authorized to do so.

(6) A producer, after completing the absentee voter registration form and marking the ballot, shall remove the

ballot portion of the combined registration and absentee ballot form (Form LS-73) and seal the completed ballot in a separate envelope marked "Pork Ballot" (Form LS-72-1) and place the sealed "Pork Ballot" envelope in the mailing envelope marked "Pork Referendum" (Form LS-73-1) along with the signed registration form. Producers are required to print their name and address on the mailing envelope marked "Pork Referendum" (Form LS-73-1), and mail or hand deliver it to the county FSA office from which the producer or corporation or other entity obtained the absentee voting package. Absentee ballots returned in-person must be received by close of business on the last day of the in-person voting period, which is September 21, 2000. Ballots received after that date will be counted as invalid ballots.

(7) Absentee ballots returned by mail have to be postmarked with a date not later than the last day of the in-person voting period, which is September 21, 2000, and be received in the county FSA office by the close of business on the 5th business day after the last day of the in-person voting period, which is September 28, 2000. Absentee ballots received after that date will be counted as invalid ballots. Upon receiving the "Pork Referendum" envelope (Form LS-73-1) containing the registration form and ballot, the county FSA CED will record the date the "Pork Referendum" envelope (Form LS-73-1) containing the absentee ballot was received in the FSA county office on the Absentee Voter Request List (Form LS-74) opposite the name of the producer voting absentee. The county FSA CED will place it, unopened, in a secure ballot box.

§ 1230.629 Registration and voting procedures for importers.

(a) Individual importers, corporations, or other entities can obtain the registration and certification forms, ballots, and envelopes by mail from the following address: USDA, FSA, Operations Review and Analysis Staff, Attention: William A. Brown, P.O. Box 44366, Washington, DC 20026-4366. Importers may pick up the voting materials in-person at USDA, FSA, Operations Review and Analysis Staff, Room 2741, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC. Importers may also request voting materials by facsimile or telephone. The facsimile number is 202/690-3354. The telephone number is 202/720-6833.

(b) When requesting a ballot, eligible importers will be required to submit a

U.S. Customs Service Form 7501 showing that they paid the pork assessment during the representative period.

(c) Upon receipt of a request and U.S. Customs Service Form 7501, the voting materials will be mailed to importers by the FSA headquarters office in Washington, DC, to the address provided by the importer or importer corporation or other entity. Only one mail ballot and registration form will be provided to each eligible importer. The forms must be requested during August 1, 2000, through September 21, 2000.

(d) The FSA headquarters office in Washington, DC, will enter on the Importer Ballot Request List (Form LS-77) the name and address of the importer requesting a ballot and the date of the request.

(e) To register, eligible importers will complete and sign the combined registration form and ballot (Form LS-76) and certify that:

(1) To the best of their knowledge and belief the information provided on the form is true and accurate;

(2) If voting on behalf of an importer corporation or other entity referred to in § 1230.612, they are authorized to do so.

(f) Eligible importers, after completing the combined ballot and registration form, will remove the ballot portion of the combined registration and ballot form (Form LS-76) and seal the completed ballot in a separate envelope marked "Pork Ballot" (Form LS-72-1) and place the sealed "Pork Ballot" envelope in the mailing envelope marked "Pork Referendum" (Form LS-73-1) along with the signed registration form. Importers, corporations, or other entities must legibly print their name and address on the mailing envelope marked "Pork Referendum" (Form LS-73-1), and mail the envelope to the FSA headquarters office at the following address: USDA, FSA, Operations Review and Analysis Staff, Attention: William A. Brown, Post Office Box 44366, Washington, DC 20026-4366. Importers may hand deliver the "Pork Referendum" envelope to USDA, FSA, Operations Review and Analysis Staff, Room 2741, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC.

(g) The "Pork Referendum" envelope (Form LS-73-1) containing the registration form and ballot has to be postmarked with a date not later than the last day of the in-person voting period, which is September 21, 2000, and be received in the FSA headquarters office by the close of business on the 5th business day after the date of the last day of the in-person voting period, which is September 28, 2000. If

delivered in-person, it has to reach headquarters office not later than the last day of the in-person voting period. Ballots received after that date will be counted as invalid ballots. Upon receiving the "Pork Referendum" envelope (Form LS-73-1) containing the registration form and ballot, an FSA employee will record the date the "Pork Referendum" envelope containing the completed ballot was received in the FSA headquarters office in Washington, DC, on the Importer Ballot Request List (Form LS-77) directly opposite the voting importer's name. The FSA employee will place the "Pork Referendum" envelope, unopened, in a secure ballot box.

§ 1230.630 List of registered voters.

(a) *Producers.* The In-Person Voter Registration List (Form LS-75) and the Absentee Voter Request List (Form LS-74) will be available for inspection during the 3 days of the voting period and during the 7 business days following the date of the last day of the voting period at the county FSA office. The lists will be posted during regular office hours in a conspicuous public location at the FSA county office. The Absentee and In-Person Voter Registration Lists will be updated and posted daily. The complete In-Person Voter Request List (Form LS-75) will be posted in the FSA county office on the 1st business day after the date of the last day of the voting period. The complete Absentee Voter Request List (Form LS-74) will be posted in the FSA county office on the 6th business day after the date of the last day of the voting period.

(b) *Importers.* The Importer Ballot Request List (Form LS-77) will be maintained by the FSA headquarters office in Washington, DC, and not posted.

§ 1230.631 Challenge of votes.

(a) *Challenge period.* During the dates of the 3-consecutive day voting period and the 7 business days following the voting period, the ballots of producers may be challenged at the FSA county office.

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

(c) *Who can be challenged.* Any producer having cast an in-person ballot or an absentee ballot whose name is posted on the In-Person Voter Registration List (Form LS-75) or the Absentee Voter Request List (Form LS-74) can be challenged. Absentee ballots have to be received in the FSA county office before a producer's vote can be challenged. There is no challenge process for importers.

(d) *Notification of challenges.* The FSA County Committee or its representative, acting on behalf of the Administrator, AMS, will notify challenged producers as soon as practicable, but no later than 12 business days after the date of the last day of the in-person voting period. FSA will notify all challenged persons that documentation such as sales documents, tax records, or other similar documents proving that the person owned and sold hogs or pigs during the representative period must be submitted or his or her vote will not be counted. The documentation must be provided to the FSA county offices within 5 business days of notification and not later than 17 business days after the date of the last day of the voting period.

(e) *Determination of challenges.* The FSA County Committee or its representative, acting on behalf of the Administrator, AMS, will make a determination concerning the challenge based on documentation provided by the producer and will notify challenged producers as soon as practicable, but no later than 22 business days after the date of the last day of the in-person voting period of its decision.

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

(g) *Appeal.* A person declared to be ineligible to register and vote by the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, can file an appeal at the FSA county office within 5 business days after the date of receipt of the letter of notification of ineligibility, but not later than November 2, 2000. The FSA county office shall send a producer's appeal by facsimile to the Administrator, AMS, on the date it is filed at the FSA county office or as soon as practical thereafter.

(h) An appeal will be determined by the Administrator, AMS, as soon as practical, but in all cases not later than the 45th business day after the date of

the last day of the voting period. The Administrator, AMS, shall send her decision on a producer's appeal to the FSA county office where the producer was initially challenged. The FSA county office shall notify the challenged producer of the Administrator's, AMS, determination on his or her appeal. The Administrator's, AMS, determination on an appeal shall be final.

§ 1230.632 Receiving ballots.

(a) *Producers.* A ballot shall be considered to be received on time if:

(1) It was cast in-person in the county FSA office prior to the close of business on the date of the last day of the in-person voting period; or

(2) It was cast as an absentee ballot, having a postmarked date not later than the last day of the in-person voting period and was received in the county FSA office not later than the close of business, 5 business days after the last day of the in-person voting period.

(b) *Importers.* A ballot shall be considered to be received on time if it had a postmarked date not later than the date of the last day of the in-person voting period and was received in the FSA headquarters office in Washington, DC, not later than the close of business, 5 business days after the last day of the in-person voting period.

§ 1230.633 Canvassing ballots.

(a) *Producers.* (1) Counting the ballots. Under the supervision of FSA CED, acting on behalf of the Administrator, AMS, the in-person registration and certification form envelopes (Form LS-72-2) and the absentee "Pork Referendum" envelopes (Form LS-73-1) containing the "Pork Ballot" envelopes for producer voters will be checked against the In-Person Voter Registration List (Form LS-75) and the Absentee Voter Request List (Form LS-74), respectively, to determine properly registered voters. The ballots of producers voting in-person whose names are not on the In-Person Voter Registration List (Form LS-75), will be declared invalid. Likewise, the ballots of producers voting absentee whose names are not on the Absentee Voter Request List (Form LS-74) will be declared invalid. All ballots of challenged producer voters declared ineligible and invalid ballots will be kept separate from the other ballots and the envelopes containing these ballots will not be opened. The valid ballots will be counted on November 29, 2000, during regular business hours on the 46th business day after the last day of the in-person voting period. FSA county office employees will remove the sealed "Pork Ballot" envelopes (Form LS-72-1) from

the registration form envelopes and "Pork Referendum" envelopes (absentee voting) envelopes of all eligible producer voters and all challenged producer voters determined to be eligible. After removing all "Pork Ballot" envelopes, FSA county employees will shuffle the sealed "Pork Ballot" envelopes or otherwise mix them up so that ballots cannot be matched with producers' names. After shuffling the "Pork Ballot" envelopes, FSA county employees will open them and count the ballots. The ballots will be counted as follows:

(i) Number of eligible producers casting valid ballots;

(ii) Number of producers favoring continuation of the Pork Checkoff Program;

(iii) Number of producers favoring termination of the Pork Checkoff Program;

(iv) Number of challenged producer ballots deemed ineligible;

(v) Number of invalid ballots; and

(vi) Number of spoiled ballots.

(2) *Invalid ballots.* Ballots will be declared invalid if a producer voting in-person has failed to print his or her name and address on the In-Person Voter Registration List (Form LS-75) or if an absentee voter's name and address is not recorded on the Absentee Voter Request List (Form LS-74), or the registration form or ballot was incomplete or incorrectly completed.

(3) *Spoiled ballots.* Ballots will be considered spoiled if they are mutilated or marked in such a way that it cannot be determined whether the voter is voting "yes" or "no." Spoiled ballots shall not be considered as approving or disapproving the Pork Checkoff Program, or as a ballot cast in the referendum.

(4) *Confidentiality.* All ballots shall be confidential and the contents of the ballots not 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.

(b) *Importers.* (1) *Counting the ballots.* FSA headquarters personnel, acting on behalf of the Administrator, AMS, will check the registration forms and ballots for all importer voters against the Importer Ballot Request List (Form LS-77) to determine properly registered voters. The ballots of importers voting whose names are not recorded on the Importer Ballot Request List (Form LS-77), will be declared invalid. All ballots of importer voters declared invalid will be kept separate from the other ballots and the envelopes containing these ballots will not be opened. The valid ballots will be counted on November 29,

2000, during regular office hours on the 46th business day after the date of the last day of the in-person voting period. FSA headquarter office employees will remove the sealed "Pork Ballot" envelope (Form LS-72-1) from the "Pork Referendum" envelopes (Form LS-73-1) of all eligible importer voters. After removing all "Pork Ballot" envelopes, FSA headquarter employees will shuffle the sealed "Pork Ballot" envelopes or otherwise mix them up so that ballots cannot be matched with importers' names. After shuffling the "Pork Ballot" envelopes, FSA headquarters employees will open the envelopes and count the ballots. The ballots will be counted as follows:

(i) Number of eligible importers casting valid ballots;

(ii) Number of importers favoring continuation of the Pork Checkoff Program;

(iii) Number of importers favoring termination of the Pork Checkoff Program;

(iv) Number of importer ballots deemed invalid; and

(v) Number of spoiled ballots.

(2) *Invalid ballots.* Ballots will be declared invalid if an importer voter's name was not recorded on the Importer Ballot Request List (Form LS-77), or the registration form or ballot was incomplete or incorrectly completed.

(3) *Spoiled ballots.* Ballots will be considered spoiled if they were mutilated or marked in such a way that it cannot be determined whether the voter is voting "yes" or "no." Spoiled ballots shall not be considered as a ballot cast in the referendum.

(4) *Confidentiality.* All ballots shall be confidential and the contents of the ballots not divulged except as the Secretary may direct. The public can witness the opening of the ballot box and the counting of the votes but can not interfere with the process.

§ 1230.634 FSA county office report.

The FSA county office will notify the FSA State office of the results of the referendum. Each FSA county office will transmit the results of the referendum in its county to the FSA State office. Such report will include the information listed in § 1230.633. The results of the referendum in each county will be made available to the public, after the results of the referendum are announced by the Secretary. A copy of the report of results will be posted for 30 days in the FSA county office in a conspicuous place accessible to the public and a copy will be kept on file in the FSA county office for a period of at least 12 months after the referendum.

§ 1230.635 FSA State office report.

Each FSA State office will transmit to the Administrator, FSA, a written summary of the results of the referendum received from all FSA county offices within the State. The summary shall include the information on the referendum results contained in the reports from all county offices within each State and be certified by the FSA State Executive Director. The FSA State office will maintain a copy of the summary where it will be available for public inspection for a period of not less than 12 months.

§ 1230.636 Results of the referendum.

(a) The Administrator, FSA, will submit the combined results of the FSA State offices' results of the producers' vote and the FSA headquarters office results of the importers' vote to the Administrator, AMS. The Administrator, AMS, will prepare and submit to the Secretary a report of the results of the referendum. The results of the referendum will be announced by the Department in an official press release and published in the **Federal Register**. State reports on producer balloting, FSA headquarters office report on importer balloting, and related papers will be available for public inspection in the office of the Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2627, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems it necessary, the report of producer voting results in

any State or county or the report of importer voting results shall be reexamined and checked by such persons as may be designated by the Secretary.

§ 1230.637 Disposition of ballots and records.

(a) *Producer ballots and records.* Each FSA CED will place in sealed containers marked with the identification of the referendum, the voter registration list, absentee voter request list, voted ballots, challenged registration forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such records will be placed under lock in a safe place under the custody of the FSA CED for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Administrator, FSA, by the end of such time, the records shall be destroyed.

(b) *Importer ballots and records.* The FSA headquarters office in Washington, DC, will deliver the importers' U.S. Customs Service Form 7501s, the voter registration list, voted ballots, invalid ballots, spoiled ballots, and national summaries and records to the Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2627, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC. A Marketing Programs Branch employee will place the ballots and records in sealed containers marked with the identification of the

referendum. Such ballots and records will be placed under lock in a safe place under the custody of the Marketing Programs Branch for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Administrator, AMS, by the end of such time, the records shall be destroyed.

§ 1230.638 Instructions and forms.

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

Dated: July 7, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

BILLING CODE 3410-02-P

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix—Pork Referendum Forms

The following nine forms referenced in Subpart E Part 1230—Procedures for the Conduct of a Referendum—will be used for registering and voting in the pork referendum and for listing registered voters.

LS-72 Pork Producer In-Person Voting
LS-72-1 Pork Ballot (Envelope)
LS-72-2 In-Person Registration and Certification (Envelope)
LS-73 Pork Producer Absentee Voting
LS-73-1 Pork Referendum (Envelope)
LS-74 Absentee Voter Request List
LS-75 In-Person Voter Registration List
LS-76 Pork Importer Mail Voting
LS-77 Importer Ballot Request List

PORK PRODUCER IN-PERSON VOTING

UNITED STATES DEPARTMENT OF AGRICULTURE AGRICULTURAL MARKETING SERVICE REFERENDUM ON THE PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

ELIGIBLE VOTERS:

- **Individual Producers:** Any individual who owned and sold one or more pigs or hogs at any time between August 18, 1999, and August 17, 2000, in his or her own name may cast one vote as an individual producer.
- **Business Entity Producers:** A corporation, partnership, estate, or other legal business entity that owned and sold one or more pigs or hogs at any time between August 18, 1999, and August 17, 2000, is entitled to one vote. An authorized individual may cast the business entities' vote.
- **Producers Who Sell Hogs as Individuals and Represent a Business Entity:** If an individual owned and sold one or more pigs or hogs between August 18, 1999, and August 17, 2000, in his or her own name and is an authorized representative of a legal business entity who owned and sold one or more pigs or hogs between August 18, 1999 and August 17, 2000, he or she may cast the one vote for the business entity and one vote as an individual producer.
- **Contract Producers are Not Eligible to Vote:** Individuals or business entities that raise pigs or hogs under production contracts are not eligible to vote unless they owned and sold one or more pigs or hogs in their own name.

INSTRUCTIONS TO VOTERS (Please read carefully):

1. Before you **VOTE**, you must *print your name and address* on the **In-Person Voter Registration List**, and if you are voting on behalf of a legal business entity, such as a partnership, corporation, estate, etc., also print its name and address on the **In-Person Voter Registration List**.
2. Individual producers and other producer entities may vote at the county Farm Service Agency (FSA) office where FSA maintains and processes the producer's administrative farm records. Producers not participating in FSA programs may vote in the county FSA office serving the county where the producer owns hogs and pigs.
3. If you are voting as an individual, please print your name, address, and telephone number in the spaces provided and sign the **Registration and Certification Statement**. If you are voting on behalf of a legal business entity, such as a partnership, corporation, estate, etc., print your name first and then print its name, address, and telephone number in the spaces provided and sign the **Registration and Certification Statement**.
(If you do not complete this step your ballot will be invalidated and your vote will not be counted.)
4. Check "Yes" or "No" on the **Ballot** below. Put this form in the envelope marked "**PORK BALLOT**" and seal it.
5. Put the "**PORK BALLOT**" envelope into the "**PORK REFERENDUM**" envelope, seal it, and place it in the designated "Ballot Box."

BALLOT

Do you favor continuing the Pork Checkoff program?

☐

YES

☐

NO

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0194. The time required to complete this information collection is estimated to average .05 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call 202-720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

PORK BALLOT

Seal and insert into envelope marked "Pork Referendum".

LS-72-1 (06-00)

3 5/8" x 6 1/2" ENVELOPE

PORK REFERENDUM

FORM APPROVED - OMB NO. 0581-0194

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

REFERENDUM ON THE PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

IN-PERSON REGISTRATION AND CERTIFICATION

According to the Privacy Act of 1974 (5 USC 552a) and the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0093. The time required to complete this information collection is estimated to average .05 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The authority for requesting the information to be supplied on this form is the Pork, Promotion, Research, and Consumer Information Act of 1985. The information would be furnished to pork producers and importers of pork and pork products who voluntarily participate in the referendum.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means of communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 324-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

You may, by law, be fined up to \$10,000, imprisoned up to 5 years, or both, for knowingly or willfully making false statements within this document (18 USC Section 1001).

NOTE: If you are voting as an individual, please print your name, address, and telephone number in the spaces provided and sign the Registration and Certification Statement. If you are voting on behalf of a legal business entity, such as a partnership, corporation, estate, etc., print your name first and then print its name, address, and telephone number in the spaces provided and sign the Registration and Certification Statement.

NAME (See note above)

REPRESENTING (if applicable)

MAILING ADDRESS (Street, P.O. Box, or Route No., City, State, ZIP Code)

TELEPHONE NUMBER (including area code)

CERTIFICATION STATEMENT

I HEREBY CERTIFY at some time between August 18, 1999, and August 17, 2000, I, or the entity that I am authorized to represent, owned and sold one or more pigs or hogs and that this is the only vote I am casting in this capacity in the pork referendum. I further certify that to the best of my knowledge and belief the information provided herein is true and accurate.

SIGNATURE

DATE

LS-72-2 (06-00)

4 1/8" X 9 1/2" ENVELOPE

Form Approved - 0581-0194

PORK PRODUCER ABSENTEE VOTING

UNITED STATES DEPARTMENT OF AGRICULTURE AGRICULTURAL MARKETING SERVICE REFERENDUM ON THE PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

ELIGIBLE VOTERS:

- **Individual Producers:** Any individual who owned and sold one or more pigs or hogs at any time between August 18, 1999, and August 17, 2000, in his or her own name may cast one vote as an individual producer.
- **Business Entity Producers:** A corporation, partnership, estate, or other legal business entity that owned and sold one or more pigs or hogs at any time between August 18, 1999, and August 17, 2000, is entitled to one vote. An authorized individual may cast the business entity's vote.
- **Producers Who Sell Hogs as Individuals and Represent a Business Entity:** If an individual owned and sold one or more pigs or hogs between August 18, 1999, and August 17, 2000, in his or her own name and is an authorized representative of a legal business entity who owned and sold one or more pigs or hogs between August 18, 1999, and August 17, 2000, he or she may cast the one vote for the business entity and one vote as an individual producer.
- **Contract Producers are Not Eligible to Vote:** Individuals or business entities that raise pigs or hogs under production contracts are not eligible to vote unless they owned and sold one or more pigs or hogs in their own name.

INSTRUCTIONS TO VOTERS (Please read carefully):

1. If you are voting as an individual, please print your name, address, and telephone number in the spaces provided below and sign the Registration and Certification Statement. If you are voting on behalf of a legal business entity, such as a partnership, corporation, estate, etc., print your name first and then print its name, address, and telephone number in the spaces provided and sign the Registration and Certification Statement.
2. Mark "Yes" or "No" on the Ballot below.
3. Separate the completed Ballot from the rest of this form, and put the Ballot in the envelope marked "PORK BALLOT." Seal the "PORK BALLOT" envelope.
4. Place both the sealed "PORK BALLOT" envelope and remainder of the form containing the completed and signed Registration and Certification Statement into the envelope marked "PORK REFERENDUM." Seal the "PORK REFERENDUM" envelope. *Print your name and address in the upper left-hand corner of the "PORK REFERENDUM" envelope.*
5. Mail or deliver the "PORK REFERENDUM" envelope to the county Farm Service Agency (FSA) office from which you obtained the absentee voting materials. To be counted, your "PORK REFERENDUM" envelope must contain the correct and completed forms.
6. If the "PORK REFERENDUM" envelope is mailed, it must be postmarked not later than September 21, 2000, and arrive in the county FSA office not later than September 28, 2000.
7. If the "PORK REFERENDUM" envelope is hand delivered, it must arrive at the FSA county office by close of business September 21, 2000.
8. Failure to complete, sign, and return this Registration and Certification Statement with the Ballot will invalidate the Ballot and your vote will not be counted. Late ballots will not be counted.

REGISTRATION AND CERTIFICATION STATEMENT (Absentee voting)	
NAME (See instruction number 1)	REPRESENTING (if applicable)
MAILING ADDRESS (Street, P.O. Box, or Route No., City, State, ZIP Code)	TELEPHONE NUMBER (including area code)
I HEREBY CERTIFY at some time between August 18, 1999, and August 17, 2000, I, or the entity that I am authorized to represent, owned and sold one or more pigs or hogs and that this is the only vote I am casting in this capacity in the pork referendum. I further certify that to the best of my knowledge and belief the information provided herein is true and accurate.	
SIGNATURE	DATE

LS-73 (06-00)

You may, by law, be fined up to \$10,000, imprisoned up to 5 years, or both, for knowingly or willfully making false statements within this document (18 USC Section 1001).

SEPARATE HERE

BALLOT	
Do you favor continuing the Pork Checkoff program?	
☐ YES	☐ NO

(See reverse of form for Burden and Nondiscriminatory Statements.)

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a persons is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0194. The time required to complete this information collection is estimated to average .10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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PLACE
STAMP
HERE

LS-73-1 (06-00)

Name and Return Address

PORK
REFERENDUM

4 1/8" x 9 1/2" Envelope

FORM APPROVED - OMB NO. 0581-0194

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

**REFERENDUM ON THE PORK PROMOTION,
RESEARCH, AND CONSUMER INFORMATION ORDER**

NOTE: A separate "In-Person" Voter Registration List must be maintained for each county served.

[illegible]

Form Approved - 0581-0194

PORK IMPORTER MAIL VOTING

UNITED STATES DEPARTMENT OF AGRICULTURE AGRICULTURAL MARKETING SERVICE REFERENDUM ON THE PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

ELIGIBLE VOTERS:

- **Individual Importers:** Any individual who imported pigs, hogs, pork, or pork products at any time between August 18, 1999, and August 17, 2000, in his or her own name may cast one vote as an individual importer.
- **Business Entity Importers:** A corporation, partnership, estate, or other legal business entity that imported pigs, hogs, pork, or pork products at any time between August 18, 1999, and August 17, 2000, is entitled to one vote. An authorized individual may cast the business entities' vote.
- **Importers Who Import as Individuals and Represent a Business Entity:** If an individual imported pigs, hogs, pork, or pork products between August 18, 1999, and August 17, 2000, in his or her own name and is an authorized representative of a legal business entity who imported pigs, hogs, pork, or pork products between August 18, 1999, and August 17, 2000, he or she may cast the one vote for the business entity and one vote as an individual importer.

INSTRUCTIONS TO VOTERS (Please read carefully):

1. If you are voting as an individual, please print your name, address, and telephone number in the spaces provided below and sign the **Registration and Certification Statement**. If you are voting on behalf of a legal business entity, such as a partnership, corporation, estate, etc., print your name first and then print its name, address, and telephone number in the spaces provided and sign the **Registration and Certification Statement**.
2. Mark "Yes" or "No" on the **Ballot** below.
3. Separate the completed **Ballot** from the rest of this form, and put the **Ballot** in the envelope marked "PORK BALLOT." Seal the "PORK BALLOT" envelope.
4. Place both the sealed "PORK BALLOT" envelope and the remainder of the form containing the completed and signed **Registration and Certification Statement** into the envelope marked "PORK REFERENDUM." Seal the "PORK REFERENDUM" envelope. *Print your name and address in the upper left-hand corner of the "PORK REFERENDUM" envelope.*
5. Mail or deliver the "PORK REFERENDUM" envelope to the Farm Service Agency (FSA) office in Washington, D.C. To be counted, your "PORK REFERENDUM" envelope must be postmarked not later than September 21, 2000, and arrive in the Washington, D.C., FSA office not later than September 28, 2000.
6. Mailing address of Washington D.C. Office: USDA, FSA, Review and Analysis Staff, Attention: William A. Brown, P.O. Box 44366, Washington, D.C. 20026-4366.
7. If hand delivered the "PORK REFERENDUM" envelope must arrive in the FSA office at the following address: FSA, Operations Review and Analysis Staff, Room 2741, South Agriculture Building, 1400 Independence Avenue, SW., Washington, D.C., not later than September 21, 2000.
8. Failure to complete, sign and return this **Registration and Certification Statement** with the **Ballot** will invalidate the **Ballot** and your vote will not be counted. **Late ballots will not be counted.**

REGISTRATION AND CERTIFICATION STATEMENT (Mail voting)	
NAME (See instruction number 1)	REPRESENTING (if applicable)
MAILING ADDRESS (Street, P.O. Box, or Route No., City, State, ZIP Code)	TELEPHONE NUMBER (including area code)
I HEREBY CERTIFY that sometime between August 18, 1999, and August 17, 2000, I, or the entity that I am authorized to represent, imported pigs, hogs, pork, or pork products and that this is the only vote I am casting in this capacity in the pork referendum. I further certify that to the best of my knowledge and belief the information provided herein is true and accurate.	
SIGNATURE	DATE

LS-76 (06-00)

You may, by law, be fined up to \$10,000, imprisoned up to 5 years, or both, for knowingly or willfully making false statements within this document (18 USC Section 1001).

SEPARATE HERE

BALLOT Do you favor continuing the Pork Checkoff program? ☐ YES ☐ NO	
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(See reverse of form for Burden and Nondiscriminatory Statements.)

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