



October 5, 2009

Dear Importer:

The United States Department of Agriculture, Agricultural Marketing Service (AMS) is proposing to amend the Cotton Research and Promotion Order (Order) to implement section 14202 of the Food, Conservation, and Energy Act of 2008 (Pub. L.110-234), or “2008 Farm Bill”, that amended the Cotton Research and Promotion Act (7 U.S.C. 2101–2118) (Act). The 2008 Farm Bill designated the States of Kansas, Virginia, and Florida in the definition of “cotton-producing state.”

AMS conducted a formal rulemaking hearing before an Administrative Law Judge on the proposed amendments to the Order on Friday, December 5, 2008, in Washington, D.C. USDA issued the Secretary’s Decision and Referendum Order on Monday, October 5, 2009. The decision proposes amendments to the Order and provides Upland cotton producers and importers with the opportunity to vote in a referendum to determine if they favor the changes. According to the Act, a referendum among cotton producers and cotton importers is required to implement, amend, continue, or when appropriate, to suspend, or to terminate the Order or any of its provisions. AMS will provide an opportunity for all eligible persons to vote on the amendments to the Order from October 13-November 10, 2009.

To participate in the referendum, please complete the attached form and include a copy of a Customs and Border Protection Form 7501 and return the documents to USDA, FSA, DAFO, P.O. Box 23704, Washington, D.C. 20026-3704. For your vote to be counted, your ballot must be received no later than November 10, 2009.

The Cotton Research and Promotion Program is a cotton producer and importer funded, self-help marketing program initiated by Congress in 1966. USDA, AMS oversees the administration of this program. The purpose of this program is to strengthen Upland cotton’s competitive position and to maintain and expand domestic and foreign markets for Upland cotton.

Cotton and Tobacco Programs

Attachments



OFFICIAL REFERENDUM BALLOT
COTTON RESEARCH AND PROMOTION ORDER

Please read the Referendum Procedures (see attached) carefully to determine your voting eligibility. Then complete Sections I and II of this ballot and include a copy of one U.S. Customs and Border Protection 7501 showing payment of a cotton fee/assessment for the January 1, 2008 through December 31, 2008, and return these documents to **U.S. Department of Agriculture, FSA, DAFO, P.O. Box 23704, Washington, D.C. 20026-3704** For your ballot to be counted during the referendum period, your request must be received no later than **November 10, 2009.**

I. VOTE (Mark one box only)

Do you favor the following amendments to the Cotton Research and Promotion Order:

YES **NO**

1. Revise 7 CFR 1205.314, of the definition of "cotton-producing state" to read as follows:

"Cotton-producing State" means each of the following States and combination of States: Alabama; Arizona; Arkansas; California-Nevada; Florida; Georgia; Kansas; Louisiana; Mississippi; Missouri-Illinois; New Mexico; North Carolina; Oklahoma; South Carolina; Tennessee-Kentucky; Texas; Virginia.

2. Revise 7 CFR 1205.319, the definition of "cotton-producing region" to read as follows:

"Cotton-producing region" means each of the following groups of cotton-producing States: (a) Southeast Region: Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia; (b) Midsouth Region: Arkansas, Louisiana, Mississippi, Missouri-Illinois, and Tennessee-Kentucky; (c) Southwest Region: Kansas, Oklahoma and Texas; (d) Western Region: Arizona, California-Nevada, and New Mexico.

II. SIGNATURE -ALL BALLOTS MUST BE SIGNED AND DATED BELOW IN ORDER TO BE COUNTED.

I **CERTIFY** that I am an eligible producer or importer as defined by the referendum procedures and that the following information contained on this ballot is true, complete, and correct to the best of my knowledge and belief, and is made in good faith. If this ballot is being cast on behalf of any group of individuals, partnerships, corporation, or other business entity engaged in the production or importation of cotton, I also **CERTIFY** that I have the authority to cast this ballot and will submit evidence thereof if requested.

Print Name

Company Name

Address

Signature

Date

BURDEN AND NONDISCRIMINATION STATEMENTS

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 0581-0093. The time required to complete this information collection is estimated to average 6 minutes 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, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotope, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

CN-100, Attachment D

Rules and Regulations

Federal Register

Vol. 74, No. 191

Monday, October 5, 2009

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. AMS-CN-09-0027; CN-08-003]

Cotton Research and Promotion Program: Referendum Procedures

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures which the Department of Agriculture (USDA) will use in conducting a referendum considering amendments to the Cotton Research and Promotion Order (7 CFR part 1205) (Order) implementing section 14202 of the Food, Conservation, and Energy Act of 2008, hereinafter the "2008 Farm Bill." USDA is considering amendments to the Order in a separate action. Referenda among cotton producers and cotton importers are required by the Cotton Research and Promotion Act (Act) to implement, amend, continue, or when appropriate to suspend or terminate the Order or any of its provisions. The provisions of this rule would be used for all such referenda.

DATES: *Effective Date:* October 6, 2009.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2637-S, Washington, DC 20250-0224, telephone (202) 720-6603, facsimile (202) 690-1718, or e-mail at shethir.riva@ams.usda.gov. A copy of this final rule may also be found at: <http://www.regulations.gov>.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This final rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Act, any person subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) [5 U.S.C. 601-612], the Agricultural Marketing Service has considered the economic effect of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities. There are currently approximately 18,000 producers, and approximately 16,000 importers that are subject to the order. In 13 CFR part 121, the Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (handlers) as those having annual receipts of no more than \$7.0 million. The majority of these producers and importers are small businesses under the criteria established by the SBA.

This final rule establishes the procedures under which cotton producers and importers vote on whether to implement, amend, continue, or when appropriate to suspend or terminate the Order or any

of its provisions. This rule would add a new subpart and establish procedures for all such referenda. The subpart covers definitions, voting, instructions, ballots, the referendum report, and confidentiality of information.

USDA will keep cotton producers and importers who are eligible to vote informed throughout the referendum process to ensure that they are aware of and are able to participate. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in a referendum is optional; however, if cotton producers and importers choose to vote, the burden of voting is minimal and necessary to determine whether or not they favor the action to be taken with regards to the Order or any of its provisions.

In accordance with the Office of Management and Budget (OMB) regulation 5 CFR part 1320 that implements the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) the information collection requirements concerning procedures to conduct referenda in connection with the Cotton Research and Promotion Order has been previously approved by OMB and assigned OMB Control Number 0581-0093.

USDA considered electronic voting, but the use of computers is not universal. Conducting the referendum from Farm Service Agency county offices and the USDA, Washington, DC office would be more cost-effective and reliable.

Background

The Act established a national cotton research and promotion program—administered by the Board—that is financed through cotton producer and cotton importer industry assessments and subject to oversight by AMS. This program of promotion, research, and consumer information is designed to strengthen the position of cotton in the marketplace and to establish, maintain, and expand markets for Upland cotton. The program is funded by assessments levied on each bale or bale equivalent of cotton at a rate of \$1 per bale with a supplemental assessment not to exceed one percent of the value of lint of each bale.

The 2009 Board is composed of 38 members and 38 alternate members (23

producer and 15 importer members and alternate members) and one consumer advisor. The Act directed the Board to contract with a separate organization to conduct the research and promotion projects. The Board contracts with Cotton Incorporated (CI) to conduct the Program. CI uses assessment dollars to advance the quality of and demand for cotton fiber through its operating divisions: (1) Global Product Marketing, (2) Consumer Marketing, (3) Agricultural Research and (4) Textile Research, and (5) Strategic Planning.

This final rule would establish procedures which the USDA will use in conducting referenda under the Act. USDA is proposing amendments to the Order to implement section 14202 of the 2008 Farm Bill (see Secretary's Decision published in the same issue of the **Federal Register**). Referendum procedures would need to be in place prior for the industry to vote and consider these amendments. Referenda among cotton producers and cotton importers are required by the Act to implement, amend, continue, or when appropriate, to suspend, or to terminate the Order or any of its provisions.

A proposed rule with a request for comments was published in the **Federal Register** on June 4, 2009 (74 FR 26810), with a 10-day comment period. AMS received two comments, one from a cotton growers association and one from a national cotton industry organization. Both comments were in general agreement of the proposed referendum procedures and offered the same suggested changes to the sections 1205.202 and 1205.203.

The commenters recommended correction of duplicative language in section 1205.202 and a reversal of paragraph titles in section 1205.203(a) and (b). Both of these changes have merit and the appropriate changes are made in this action.

The commenters also offered changes for section 1205.203(a) to clarify language concerning eligibility requirements, especially those concerning the specified timeframe needed to import Upland cotton in order for an importer to be eligible to vote in a referendum. The commenters believed that the proposed language was not complete and offered two alternatives to revise the provision. Proposed section 1205.203(a) provided general eligibility requirements that (1) each person who was engaged in the production of Upland cotton during the representative period; and (2) each person who is an importer of Upland cotton and imported Upland cotton during the representative period were eligible to vote. Upon review of this

language, these comments have merit. We have revised the provision to include the more appropriate language presented in order to make clear the applicable general eligibility requirements. Finally, the commenters noted that the definition of importer was not limited by a designated period. We are amending for clarity the definition of importer to include the appropriate timeframe.

In addition, USDA has included a clarifying change to the language of section 1205.204 concerning producers who grow Upland cotton in more than one county and identification of their voting office.

Pursuant to 5 U.S.C. 553, it is found and determined good cause that good cause exists for not postponing the effective date of the rule until 30 days after publication in the **Federal Register** in order to conduct a referendum considering amendments implementing section 14202 of the 2008 Farm Bill (Pub. L. 110-246) and to conform to the timeline contained in that section as closely as possible.

List of Subjects in 7 CFR Part 1205

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

■ For the reasons set forth in the preamble 7 CFR part 1205 is amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

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

Authority: 7 U.S.C. 2101-2118 and 7 U.S.C. 7401.

■ 2. Part 1205 is amended by adding a new Subpart, consisting of §§ 1205.200 through 1205.210, to read as follows:

Subpart—Procedures for the Conduct of Referenda in Connection With Cotton Research and Promotion Order

Sec.	
1205.200	General.
1205.201	Definitions.
1205.202	Agencies through which a referendum shall be conducted.
1205.203	Voting eligibility.
1205.204	Voting.
1205.205	Canvass of ballots.
1205.206	Reporting results of referendum.
1205.207	Challenge of correctness of county summary of ballots.
1205.208	Disposition of ballots and records.
1205.209	Confidential Information.
1205.210	Additional instructions and forms.

Subpart—Referendum Procedures

§ 1205.200 General.

Referenda for the purpose of ascertaining whether producers and importers favor the issuance, continuance, amendment, suspension, or termination of the Cotton Research and Promotion Order shall be conducted in accordance with this subpart.

§ 1205.201 Definitions.

(a) *Act* means the Cotton Research and Promotion Act, as amended (7 U.S.C. 2101-2118; Pub. L. 89-502, as amended).

(b) *Administrator* means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom authority has been delegated to act in the Administrator's stead.

(c) *Agricultural Marketing Service* also referred to as "AMS" means the Agricultural Marketing Service of the Department.

(d) *Cotton* means all Upland cotton harvested in the United States or imports of Upland cotton, including the Upland cotton content of the products derived thereof. The term *cotton* shall not, however, include any entry of imported cotton by an importer which has a value or weight less than the *de minimis* value established by the Secretary or industrial products as that term is defined by regulation.

(e) *Upland Cotton* means all cultivated varieties of the species *Gossypium hirsutum L.*

(f) *Department* means the U.S. Department of Agriculture.

(g) *Deputy Administrator* means the Deputy Administrator for Field Operations and also referred to as "DAFO."

(h) *Farm Service Agency* also referred to as "FSA" means the Farm Service Agency of the Department.

(i)(1) *Importer* means any person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States and who, during a 12-month period ending no later than 90 days prior to the conduct of the referendum, imported Upland cotton, and

(2) the term *import* means any such entry.

(j) *Order* means the Cotton Research and Promotion Order.

(k) *Person* means any individual 18 years of age or older, or any partnership, corporation, association, or any other entity.

(l) *Producer* means any person who shares in a cotton crop, or in the proceeds thereof, as an owner of the

farm, cash tenant, landlord of a share tenant, share tenant, or sharecropper, that planted the cotton during the representative period.

(m) *Representative Period* means the period designated by the Secretary pursuant to section 8 of the Act (7 U.S.C. 2107).

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

(o) *State* means each of the 50 states.

(p) *United States* means 50 states of the United States of America.

(q) *Customs and Border Protection* means the U.S. Customs and Border Protection of the Department of Homeland Security. Customs and Border Protection is also referred to as "CBP."

§ 1205.202 Agencies through which a referendum shall be conducted.

(a) Agricultural Marketing Service. The Administrator shall:

(1) Determine the referendum period.

(2) Give producers and importers reasonable advance notice of the referendum

(i) by utilizing without advertising expense, available media of public information (including, but not being limited to, press and radio facilities) to announce the dates, places, or methods of voting, and other pertinent information, and

(ii) by such other means as the Administrator may deem advisable.

(3) Provide ballots and related material to be used in the referendum to FSA. The ballots:

(i) shall provide for recording essential information for ascertaining whether the person voting is an eligible voter, and

(ii) may provide for recording the total amount of Upland cotton produced by the producer or the total amount of cotton imported by the importer during the appropriate representative period.

(4) Make available to producers through FSA county offices instructions on voting, an appropriate ballot and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order. The instructions on voting shall explain the method to be used in determining the amount of Upland cotton produced during the representative period and shall specify whether such amount is to be entered on the ballot by the voter, subject to the following terms and conditions:

(i) If a current production year for which harvesting has not been

completed is designated as the representative period, the amount of Upland cotton produced shall be determined by the FSA county office on the basis of the acreage planted or in the case of approved prevented plantings under the disaster payment program, the acreage the person intended to plant up to the allotted acreage as determined by the FSA county office, and the established yield for FSA program payment purposes: *Provided*, That on farms for which an established yield has not been established, the county committee shall determine an established yield based on actual production records on the farm for the preceding three years, as adjusted for any abnormal conditions, if available; if not available, on the basis of yield on similar farms in the area.

(ii) On farms in which more than one eligible voter is engaged in production, the vote cast by each voter shall represent only the amount of Upland cotton that is the voter's share of the crop, or proceeds thereof.

(iii) If an eligible voter is engaged in production of Upland cotton on more than one farm, such voter is entitled to only one vote but any vote cast by such voter shall represent the total amount of Upland cotton that is that voter's share of the crop, or proceeds thereof, on all such farms: *Provided*, That only farms for which records are maintained by the FSA county office designated as the voter's polling place shall be considered unless the voter, prior to the expiration of the referendum period, establishes to the satisfaction of such county office the voter's share of the crop, or proceeds thereof, on an additional farm or farms.

(5) Make available to importers through FSA instructions on voting, an appropriate ballot and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order. The instructions on voting shall explain the appropriate method to be used in determining the amount of cotton imported during the representative period and specify whether such amount is to be entered on the ballot. If applicable, the following terms and conditions apply:

(i) For importer entities in which more than one importer is eligible to vote, the vote cast by each importer shall represent only the amount in weight or value of cotton imported by each eligible voter.

(ii) If an eligible importer is engaged in importation of cotton as more than one importer entity, such voter is entitled to only one vote but any vote cast by such voter shall represent the total amount in weight or value, of

cotton in the voters share of cotton imported from each such importer entity: *Provided*, that only the importer entities for which records are maintained by CBP or other source determined by the Administrator shall be considered unless the voter, prior to the expiration of the referendum period, establishes to the satisfaction of the Administrator the voters share, in weight or value, of the imported cotton.

(b) *Farm Service Agency*. Except for the functions specified in paragraph (a) of this section the Deputy Administrator shall be in charge of and responsible for conducting the referendum. Each FSA county office shall be in charge and responsible for conducting such referendum in its State. Each county office shall be responsible for the proper holding of such referendum in its county. It shall be the duty of each FSA county office to conduct each referendum in a fair, unbiased, and impartial manner in accordance with the regulations in this subpart.

§ 1205.203 Voting eligibility.

(a) *General eligibility requirements*. The following persons shall be eligible to vote in an announced referendum—

(1) each person who was engaged in the production of Upland cotton during the representative period; and

(2) each person who is an importer of Upland cotton and who, during a 12-month period ending no later than 90 days prior to the conduct of the referendum, imported Upland cotton.

(b) *Special eligibility requirements*.

(1)(i) A person may qualify as an eligible voter by meeting the eligibility requirements, but no such person shall be entitled to more than one vote regardless of the number of importing entities or Upland cotton farms in which the person is interested or the number of communities, counties, or States in which are located farms in which such person is interested:

Provided, however, That the individual members of a qualified partnership shall each have one vote, but the partnership as such shall not have a vote and an individual who qualifies as an eligible voter by reason of that individual's separate farming or importing operations will be entitled to one vote even though that person is interested in an entity such as (but not limited to) a corporation which is also eligible as a voter and entitled to one vote. A person who, as a guardian, administrator, executor, or trustee engages in the production of Upland cotton or importation of cotton will be eligible to vote in such a fiduciary capacity if, in such a capacity, that person qualifies as an eligible voter.

(ii) In such cases the person for whom he or she is acting in a fiduciary capacity will not be eligible to vote. An individual may, if otherwise eligible, cast a ballot in his or her individual capacity although that person may also cast a ballot as a guardian, administrator, executor, or trustee. An individual who holds more than one fiduciary position may vote as a fiduciary in each case in which that person is otherwise eligible, as for example, if an individual is administrator of estate X, he or she may cast a ballot as administrator of estate X, and if the same individual is administrator of estate Y, he or she may cast another ballot as administrator or estate Y.

(2) Where a group of several persons, such as a spouse or marital partner, and children, or unrelated individuals, are engaged in the production of Upland cotton under the same lease or cropping agreement, only the person or persons who signed or entered into the lease or cropping agreement shall be eligible to vote. In the event two or more persons are engaged in the production of Upland cotton as joint tenants, tenants in common, or owners of community property, each such person shall be entitled to one vote if otherwise qualified. For example, a husband or a wife is eligible to vote if he or she shares with his or her spouse in the proceeds of the required crop as an owner, cash tenant, share tenant, sharecropper or landlord of a fixed rent, standing rent or share tenant. Thus, if a husband and wife are tenants or sharecropper on a farm, jointly responsible under the rental or sharecropping agreement, both are eligible to vote. This is true whether the rental or sharecropping agreement is written, signed by both parties, or oral, provided both husband and wife made the oral agreement. A minor is not disqualified from voting solely because of minority if otherwise eligible and the minor is not less than 18 years of age.

(c) *Voting by proxy prohibited.* There shall be no voting by proxy or agent but a duly authorized officer of a corporation, association or their legal entity may cast its vote.

§ 1205.204 Voting.

(a) *Place of voting.* The FSA county office serving the county in which the producer's farm is located shall be the producer's polling place. For a person not participating in an FSA program, the opportunity to vote in a referendum will be provided at the FSA county office serving the county where the person owns or rents land. If a person's operation is located in several counties, the voting office shall be determined

based on the major portion of the operation's location. The U.S. Department of Agriculture, FSA, DAFO, P.O. Box 23704, Washington, DC 20026-3704 shall be the polling place for all cotton importers.

(b) *Register of eligible voters.* The FSA county office shall establish a register of known eligible producer voters prior to the referendum. AMS shall establish a register of known eligible importer voters prior to the referendum and provide the list to FAS.

(c) *Voting.* (1) For Upland producers to vote, eligible persons may obtain form CN-100 in-person, by mail or by facsimile from FSA county offices or through the Internet during the voting period. A completed and signed CN-100 and supporting documentation, such as a sales receipt or remittance form, must be returned to the appropriate FSA county office. Forms obtained via the Internet will be located at <http://www.ams.usda.gov/Cotton>. Upon request by Upland producers, ballots shall be mailed by FSA county offices.

(2) For cotton importers to vote, eligible persons may obtain form CN-100 in-person, by mail or by facsimile from USDA, FSA in Washington, D.C. or through the Internet during the voting period. In addition, before the referendum, USDA shall mail a request form to each known, eligible, cotton importer. A completed and signed CN-100 and supporting documentation of CBP Form 7501, must be returned USDA, FSA, DAFO, P.O. Box 23704, Washington, DC 20026-3704. Forms obtained via the Internet will be located at <http://www.ams.usda.gov/Cotton>.

(d) *Returning ballot to polling place.* Each person to whom a ballot is issued by Internet, mail, facsimile, or in-person shall only be allowed to vote in the referendum by completing and signing the ballot, placing it in an envelope, and delivering or mailing it to the appropriate polling place. In order to be eligible for tabulation, voted ballots must be received at the polling place during the period established for holding the referendum. A ballot shall be considered to have been received during the referendum period if:

(1) In the case of the ballot delivered to the polling place, it was received in the office prior to the close of the work day on the final day of the referendum period, or

(2) In the case of the mailed ballot, it was postmarked not later than midnight of the final day of the referendum period and was received in the polling place prior to the start of canvassing the ballots.

(e) *Placing ballots in ballot box.* Notwithstanding the fact that a ballot(s)

may be later challenged by FSA county office or a representative of FSA, envelopes containing ballots received at the polling place during the referendum period shall remain unopened and shall be placed immediately in a ballot box provided by FSA for producers and importers. Such ballot box shall be arranged so that ballots cannot be read or moved without breaking the seal on the container.

§ 1205.205 Canvass of ballots.

(a) *Canvassing procedure.* Canvassing of returned ballots shall take place as soon as possible after the opening of the FSA offices on the fifth day following the close of the referendum period. Such canvassing shall be in the presence of at least one member of the FSA county office for producer ballots or an FSA representative for importer ballots and shall be open to the public. The canvassing and ballots shall be handled in such a manner so that no member of the public may see how any person voted in the referendum. The county office or FSA representative shall supervise the opening of the sealed ballot box, the opening of the envelopes containing the ballots and a determination as to:

(1) The number of eligible voters favoring the Order and where necessary, the amount of cotton represented by them,

(2) The number of eligible voters disapproving the Order and, where necessary, the amount of cotton represented by them.

(3) The number of ballots cast by voters found to be ineligible to vote in the referendum, and

(4) The number of spoiled ballots. The ballots determined to be spoiled or cast by ineligible voters shall not be considered as approving or disapproving the Order, and the persons who cast such ballots shall not be regarded as participating in the referendum.

(b) *Spoiled ballots.* A ballot shall be considered as a spoiled ballot if:

(1) It is mutilated or marked in such a way that it is not possible to determine with certainty how the ballot was intended to be counted, or

(2) It does not contain the signature of the voter, or the voter's properly witnessed mark.

(c) *Challenge of ballots.* A producer ballot may be challenged by the member of the FSA county office and the importer ballot may be challenged by the representative of FSA. Before a challenged ballot is either counted or declared invalid, a determination shall be made by the FSA county office or representative of FSA as to the

eligibility of the voter to vote in the referendum.

§ 1205.206 Reporting results of referendum.

(a) Each FSA county office shall transmit a written county summary of ballots showing the results of the referendum in its county to its State office.

(b) Each State office shall transmit a written summary of the referendum results from the county offices within its State to DAFO, and DAFO will provide a copy to the AMS. AMS will make the results available for public inspection for a period of 5 years following the end of the referendum period.

(c) AMS shall prepare and submit to the Secretary a report as to the results of the referendum. The Secretary shall then publically proclaim the results of the referendum.

§ 1205.207 Challenge of correctness of county summary of ballots.

The FSA state offices shall make a prompt investigation and decision in case of any dispute or challenge regarding the correctness of the county summary of ballots in any county: *Provided*, That no dispute of challenge shall be investigated unless it is brought to the attention of the State FSA office within 3 days after receipt by the FSA State office of the county summary of ballots from such county.

§ 1205.208 Disposition of ballots and records.

The FSA county office shall seal the voted ballots, challenged ballots found to be ineligible, spoiled ballots, register sheets, and summary sheets for the county in one or more envelopes or packages, plainly marked with the identification of the referendum, the date and the names of the county and State, and place them under lock and key in a safe place under the custody of the FSA county office for a period of 45 days after the referendum period. If no notice to the contrary is received by the end of such time, and after the ballots and other records have been examined by a representative of the State FSA office, the voted ballots and challenged ballots shall be destroyed, but the registers and county summary sheets shall be filed for a period of 5 years in the office of the FSA county office.

§ 1205.209 Confidential information.

(a) The ballots cast or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent shall be regarded as confidential.

(b) The ballots and other information or reports that reveal, or tend to reveal,

the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1205.210 Additional instructions and forms.

AMS is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart for the use of State and County FSA offices in conducting a referendum. Such additional instructions may include procedures for FSA county and State offices to report and announce the results of the preliminary count of the votes in the county and the State.

Dated: September 28, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9-23831 Filed 10-2-09; 8:45 am]

BILLING CODE P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1212

RIN 2590-AA19

Post-Employment Restriction for Senior Examiners

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a final regulation that sets forth a one-year post-employment restriction for senior examiners of FHFA pursuant to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, which provides that each examiner of FHFA shall be subject to the same disclosures, prohibitions, obligations, and penalties applicable to examiners employed by the Federal Reserve Banks.

DATES: The final regulation is effective November 4, 2009.

FOR FURTHER INFORMATION CONTACT:

Janice A. Kullman, Assistant General Counsel, telephone (202) 414-8970 (not a toll-free number), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110-289, 122 Stat. 2654 (2008), amended the Federal Housing

Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) to establish FHFA as an independent agency of the Federal Government.¹ FHFA was established to oversee the prudential operations of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), and the Federal Home Loan Banks (Banks) (collectively, the regulated entities), and to ensure that they operate in a safe and sound manner including being capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Safety and Soundness Act and rules, regulation, guidelines and orders issued under the Safety and Soundness Act, and the respective authorizing statutes of the regulated entities; and carry out their missions through activities authorized and consistent with the Safety and Soundness Act and their authorizing statutes; and, that the activities and operations of the regulated entities are consistent with the public interest. FHFA also has regulatory authority over the Office of Finance under 12 U.S.C. 4511.

II. Proposed Rulemaking

Section 6303(b) of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law No. 108-458 (Dec. 17, 2004), in amending section 10 of the Federal Deposit Insurance Act, established a post-employment restriction for senior examiners of the Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision.² In response, the Board of Governors of the Federal Reserve System (Federal Reserve) and the other financial regulators issued regulations on November 17, 2005, to reflect the new post-employment restriction.

The Safety and Soundness Act provides that each examiner of FHFA "shall be subject to the same disclosures, prohibitions, obligations and penalties as are applicable to examiners employed by the Federal Reserve Banks." 12 U.S.C. 4517(e). In light of that provision, FHFA published a proposed Post-Employment Restriction for Senior Examiners regulation for public comment in the **Federal Register**, 74 FR 27470 (June 10, 2009). The proposed regulation set forth

¹ See Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Title I, Section 1101 of HERA.

² 12 U.S.C. 1820(k).