

TABLE 1.—2001 COLORADO CASH RECEIPTS, ALL CROPS—Continued

Crops	Value (1,000 dollars)	Percentage
Vegetables .....	244,264	18
Fruits, nuts .....	19,242	1
Greenhouse/nursery .....	207,237	15
All other .....	49,207	4
Total .....	1,354,465	100

In 2001, all crop receipts for Montana were approximately \$657 million. Food

grains comprised approximately 56 percent of all crops followed by feed

crops (26 percent) and all other (8 percent).

TABLE 2.—2001 MONTANA CASH RECEIPTS, ALL CROPS

Crops	Value (1,000 dollars)	Percentage
Food grains .....	366,398	56
Feed .....	175,184	26
Oil .....	9,087	1
Vegetables .....	31,410	5.5
Fruits, nuts .....	1,371	0.5
Greenhouse/nursery .....	16,860	3
All other .....	56,938	8
Total .....	657,248	100

The majority of the producers in Colorado and Montana can be classified as small entities according to the Small Business Administration (SBA) criterion of \$750,000 or less in annual receipts. Agricultural producers play an important role in the States' economies. Thus, the benefits of protecting these States from infestation of Japanese beetle are worth the minor costs of inspection and treatment of air cargo.

The groups affected by this action will be air carriers flying from regulated airports in quarantined States to the protected States of Colorado and Montana. The additional costs incurred by the affected air carriers are expected to be minimal because the protocols and procedures are already established and followed for air cargo destined for any of the seven other protected States.

The majority of air cargo is transported within the United States by nine large businesses (Airborne, Burlington Express, DHL, Dynair, Emery Worldwide, Evergreen, FedEx, and United Parcel Service). According to SBA, an air carrier with more than 1,500 employees is considered large. The exact number or percentage of small air carriers who will be affected is currently unknown; however the economic effects will be limited because many entities already comply with the regulations in order to transport cargo to other protected States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not

have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

#### PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 68 FR 43613–43614 on July 24, 2003.

**Authority:** 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 17th day of March, 2004.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

#### 7 CFR Part 1220

[No. LS–03–09]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule will amend the procedures for soybean producers to request a referendum on the Soybean Promotion and Research Order (Order), as authorized under the Soybean Promotion, Research, and Consumer Information Act (Act). The changes are intended to improve the operation of these procedures.

**EFFECTIVE DATE:** March 24, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Kenneth R. Payne, Chief, Marketing Programs Branch Livestock and Seed Program, Agricultural Marketing Service (AMS), USDA, Room 2638–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; telephone 202/720–1115, fax 202/720–1125, or by e-mail at [Kenneth.Payne@usda.gov](mailto:Kenneth.Payne@usda.gov) or Phil Brockman, USDA, Farm Service Agency (FSA), DAFO, STOP 0542, 1400 Independence Avenue, SW., Washington, DC 20250–0542; telephone 202/690–8034, fax 202/720–5900, or by e-mail at [Phil.Brockman@usda.gov](mailto:Phil.Brockman@usda.gov).

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

#### SUPPLEMENTARY INFORMATION:

##### Executive 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. This final rule is not intended to have a retroactive effect. This final rule will 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 § 1971 of the Act, a person subject to the Order may file a petition with USDA stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with the law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review USDA's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

Further, § 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exception in the Act concerns assessments collected by Qualified State Soybean Boards (QSSBs). The exception provides that to ensure adequate funding of the operations of QSSBs under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Act. Another

exception concerns certain referenda conducted during specified periods by a State relating to the continuation or termination of a QSSB or State soybean assessment.

##### Regulatory Flexibility Act

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

For the purposes of the Request for Referendum, the Secretary will use the most recent number of soybean producers identified by USDA's FSA. At the time the proposed rule was published in the **Federal Register** (69 FR 3854) on January 27, 2004, the latest number of soybean producers identified by FSA was for years 2001 (587,151) and 2002 (573,825). The proposed rule contemplated averaging these two numbers to arrive at the total number of producers or baseline number that would be used to determine whether the requisite number of producers' desire a referendum. However, as a result of comments received by various organizations, and further discussions with FSA, AMS has determined that the number of producers should be determined by using FSA's data for 2002 and 2003. And rather than using a simple average of the 2 years, the total number will be calculated by combining the producers for both years and exclude duplication by only counting a producer once if that producer was engaged in the production of soybeans in both years. The total number of soybean producers that will be used as a baseline in the Request for Referendum will be changed from 585,488 to 663,880. The majority of producers subject to the Order are small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.201). SBA defines small agricultural producers as those having annual receipts of less than \$750,000 annually.

This final rule amends the current procedures for soybean producers to request a referendum on the Order. The changes were discussed in the proposed rule. Those changes affected a number of sections in subpart F of part 1220, and include requiring documentation with form LS-51-1 to demonstrate that the producer or producer entity paid soybean assessments. These changes are intended to improve the operation of the

procedures. The procedures to request a referendum on the Soybean Checkoff Program will permit participation by each person who was a producer and provides evidence that they or the producer entity they represent paid an assessment on soybeans during the representative period. USDA has determined that the representative period will be January 1, 2002, through December 31, 2003.

The information collection requirements, as discussed below, are minimal. Requesting a form by mail, in-person, facsimile, or via the Internet would not impose a significant economic burden on participants. Accordingly, the Administrator of AMS has determined that this final rule will not have a significant economic impact on a substantial number of small business entities. No comments were received regarding the RFA.

##### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. chapter 35), the reporting and recordkeeping requirements included in 7 CFR part 1220 were previously approved by OMB and were assigned OMB control number 0581-0093. The purpose of this final rule is to provide soybean producers the opportunity to request a referendum on the Order. These changes will affect the information collection requirements by requiring documentation that shows an assessment was paid during the representative period be provided with form LS-51-1. However, providing the documentation will have no significant impact on the approved per response burden for form LS-51-1. No comments were received regarding the information collection section.

##### Background

The Act (7 U.S.C. 6301-6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of 1 percent of the net market price of soybeans sold by producers. The final Order establishing a Soybean Promotion, Research, and Consumer Information Program was published in the July 9, 1991, issue of the **Federal Register** (56 FR 31043) and assessments began on September 1, 1991.

The Act required that an initial referendum be conducted no earlier than 18 months and not later than 36

months after the issuance of the Order to determine whether the Order should be continued.

The initial referendum was conducted on February 9, 1994. On April 1, 1994, the Secretary announced that of the 85,606 valid ballots cast, 46,060 (53.8 percent) were in favor of continuing the Order and the remaining 39,546 votes (46.2 percent) were against continuing the Order. The Act required approval by a simple majority for the Order to continue.

The Act also required that within 18 months after the Secretary announced the results of the initial referendum, the Secretary would conduct a poll among producers to determine if producers favored a referendum on the continuance of the payment of refunds under the Order.

A July 25, 1995, nationwide poll of soybean producers did not generate sufficient support for a refund referendum to be held. A refund referendum would have been held if at least 20 percent (not in excess of one-fifth of which may be producers in any one State) of the 381,000 producers (76,200) nationwide requested it. Only 48,782 soybean producers participated in the poll. Consequently, refunds were discontinued on October 1, 1995.

The Act also specifies that the Secretary shall, 5 years after the conduct of the initial referendum and every 5 years thereafter, provide soybean producers an opportunity to request a referendum on the Order. On October 1, 1999, through November 16, 1999, a nationwide request for a referendum on the Order was conducted to determine if there was sufficient interest among soybean producers to vote on whether to continue the Soybean Checkoff Program. If at least 10 percent of the 600,813 soybean producers nationwide (not in excess of one-fifth of which may be producers in any one State) had participated in the request for referendum, a referendum would have been held. Only 17,970 eligible soybean producers completed valid requests—far short of the 60,082 required to trigger a referendum.

For all such referendums, if the Secretary determines that at least 10 percent of U.S. producers engaged in growing soybeans (not in excess of one-fifth of which may be producers in any one State) support the conduct of a referendum, the Secretary must conduct a referendum within 1 year of that determination. If these requirements are not met, no referendum will be conducted.

For the purposes of the Request for Referendum, USDA determined that they would use the most recent data of

soybean producers identified by USDA's FSA. At the time the proposed rule was published in the **Federal Register** (69 FR 3854) on January 27, 2004, the most recent numbers of soybean producers identified by FSA was 597,151 for 2001 and 573,825 for 2002. However, as a result of comments received from various organizations and further discussions with FSA, AMS has determined that data is available for 2003 and should be used in lieu of 2001 as proposed. The information for years 2002 and 2003 is based on acreage reports compiled by FSA and using the data from the last two crop years collected will help ensure that all eligible producers are counted. After further review and discussions with FSA, it was determined that the initial baseline proposed by USDA might not include all producers who were engaged in the production of soybeans and would not accurately reflect the universe of soybeans producers for the 2-year period. For example, if Producer A grew soybeans on farm 1 in 2002 and producer B grew soybeans on farm 1 in 2003, under the proposed rule, the average number of producers for the 2 years equals one. Thus, the baseline would be "one." Based on this conclusion and the purpose of the Request for Referendum, both producers could participate and should be included in the universe or baseline. Therefore, USDA will calculate the total number of soybean producers by using FSA's data for 2002 and 2003 and will sort the data in such a manner as to include all producers that were engaged in the production of soybeans in at least one of the 2 years and will avoid counting a producer more than once if that producer engaged in the production of soybeans in both years. Using this method, USDA has determined that the number of producers for the purposes of this Request for Referendum equals 663,880.

The Act provides that producers shall have an opportunity to request a referendum during a period established by the Secretary. Eligible persons must certify on an official form that they were a producer, paid an assessment during the representative period (January 1, 2002, through December 31, 2003), and indicate that they favor the conduct of a referendum. Further, producers will be required to provide documentation, such as sales receipts, showing that an assessment was paid during the representative period at the time a request for a referendum is made. The Request for Referendum period will be held during a 4-week period announced by the Secretary. The Act also provides

that a Request for Referendum may be made in person or by mail-in request at county Cooperative Extension Service offices or county FSA offices. USDA has determined that the Request for Referendum will be held at the county FSA offices because it will give soybean producers the greatest opportunity to request a referendum.

This final rule sets forth the amended procedures as discussed in the proposed rule for producers to request a referendum as authorized under the Act, including definitions, eligibility, certification and request procedures, reporting results, and disposition of the forms and records. FSA will coordinate State and county FSA roles in conducting the Request for Referendum by (1) determining producer eligibility, (2) canvassing and counting requests, and (3) reporting the results.

### Comments

On January 27, 2004, USDA published in the **Federal Register** (69 FR 3854) a proposed rule to amend the procedures for soybean producers to request a referendum on the Order. The proposed rule provided soybean producers the opportunity to submit comments on the procedures and permit soybean producers the opportunity to request an additional referendum on the Order. The comment period ended February 17, 2004.

USDA received two comments, one from the Chief Executive Officer of the United Soybean Board (Board) and another from an interested person, in a timely manner. In addition, one late comment was received. This comment generally reflected the views of the Board's comment. The two comments have been posted on AMS' Web site at <http://www.ams.usda.gov/lsg/mpb/rp-soy.htm>. The changes suggested by commenters are discussed below. Also, USDA has made other miscellaneous changes for the purpose of clarity and accuracy. Those changes are discussed below. For the readers' convenience the discussion of comments is organized by the topic heading.

### Discussion of Comments

One commenter who did not support the Soybean Checkoff Program did not think the taxpayers of the United States should have to pay the costs of a referendum more frequently than once every 10 years. Furthermore, the commenter felt that if soybean farmers wanted more frequent referendums, then they should pay for all costs associated with the conduct and administration of such a referendum. The Act and Order provide that USDA, 5 years after the conduct of the initial

referendum and every 5 years thereafter, will give soybean producers the opportunity to request additional referendum. Furthermore, in accordance with the provisions of the Act many of the costs of the Request for Referendum or subsequent referendum are paid by soybean producers through assessments collected under the Soybean Checkoff Program. Consequently, this comment is not adopted.

#### *Section 1220.616 General*

One commenter submitted a comment regarding the methodology used by USDA in establishing the baseline or universe of producers that would be used to determine if 10 percent of the producers desire a referendum. The commenter contended that the method used to determine the number of soybean producers is an anomalous result. For example, 597,151 producers who grew soybeans during 2001 crop year can request a referendum. By averaging the two crop years (597,151 producers in 2001 and the 573,825 producers in 2002), only 58,548 or 9.8 percent of the 597,151 producers eligible to vote as a result of the 2001 crop year determination would be required for a referendum to be held. The commenters contend this methodology inappropriately lowers the statutory threshold below 10 percent.

Upon further review, it was determined that the initial baseline proposed by USDA might not include all producers who were engaged in the growing of soybeans and would not accurately reflect the universe of soybeans producers for the 2-year period. For example, if Producer A grew soybeans on farm 1 in 2002 and producer B grew soybeans on farm 1 in 2003, under the proposed rule, the average number of producers for the 2 years equals one. Thus, the baseline would be "one." However, under the Request for Referendum, both producers could participate and should be included in the universe or baseline. As previously discussed, FSA maintains a list of soybean producers that report farm crop acreages and producer crop shares. FSA has the ability to identify all producers that were engaged in growing soybeans for years 2002–2003. Further, FSA has the ability to count the number of producers that produced soybeans in any one of the 2 years and exclude duplicate counting. This comment has merit. After further review, USDA has determined that the number of producers eligible to participate in the Request for Referendum is 663,880. Thus, if 10 percent or 66,388 producers request a referendum, the referendum will be

conducted within 1 year after the results are announced. Section 1220.616(d) will be revised to include 663,880 as the total number of producers eligible to participate in the Request for Referendum.

Also, the commenter questioned a statement in the proposed rule's supplementary information section that indicated that averaging the number of soybean producers for crop years 2001 and 2002 was done in an effort to follow procedures similar to the 1999 Request for Referendum. The commenter noted that there are differences between the two. This statement was intended to merely reflect the use of more than 1 year to capture the most accurate number of producers possible. As such no change is necessary.

#### *Section 1220.618 Eligibility*

One commenter suggested that each person who requests a referendum must be required to show that the producer paid an assessment during the representative period. This comment has merit and is consistent with USDA's proposal. No change is needed. This rule requires any person who wants to request a referendum to provide documentation at the time a request is made that shows an assessment was been paid between January 1, 2002, through December 31, 2003, to be eligible to request a referendum.

#### *Section 1220.619 Time and Place for Requesting a Referendum*

One commenter supported USDA's proposal that eligible producers must participate in the county FSA office that maintains the producers' administrative farm records are appropriate. This comment has merit and is consistent with USDA's proposal for the Request for Referendum. No change is needed.

However, under § 1220.619(c), USDA removed the word "vote" and replaced it with the words "request for referendum." The Request for Referendum does not require a "yes" or "no" vote.

#### *Section 1220.622 Certification and Request Procedures*

Under § 1220.622(c), the phrase "\* \* \*" as provided in paragraph (a) of this section" has been removed and replaced with "\* \* \*" to the appropriate county FSA office" to provide more clarity. Also, for clarity, under (c), the term "the ballots" and been removed and replaced with "Form 51–1."

#### *Section 1220.623 Canvassing Requests*

Under § 1220.623(b)(1), the phrase "\* \* \*" are a producer" has been

deleted and replaced with "\* \* \*" paid an assessment'." This correction clarifies that an assessment must have been paid during the representative period to request a referendum.

Under § 1220.623(e), the words "and supporting documentation" has been added after "Form LS–51–1 under subsections (e)(2), (e)(3), (e)(4), and (e)(6)." The words "\* \* \*" or supporting documentation" has been added after the words "Form LS–51–1 under subsection (e)(5)." These additions clarify that supporting documentation must be submitted with form LS–51–1.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This action establishes the final rule, which provides soybean producers the opportunity to request a referendum on the Order. By establishing this final rule in a timely manner, USDA will be able to begin the Request for Referendum no later than May 2004.

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

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

■ For the reasons set forth in the preamble, title 7, part 1220 is amended as follows:

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

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

**Authority:** 7 U.S.C. 6301–6311.

■ 2. Subpart F is revised to read as follows:

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

##### **Definitions**

Sec.

1220.600	Act.
1220.601	Administrator, AMS.
1220.602	Administrator, FSA.
1220.603	Farm Service Agency.
1220.604	Farm Service Agency County Committee.
1220.605	Farm Service Agency County Executive Director.
1220.606	Farm Service Agency State Committee.
1220.607	Farm Service Agency State Executive Director.
1220.608	Order.
1220.609	Person.
1220.610	Producer.
1220.611	Public notice.

- 1220.612 Representative period.
- 1220.613 Secretary.
- 1220.614 Soybeans.
- 1220.615 State and United States.

#### Procedures

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

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

#### Definitions

##### § 1220.600 Act.

*Act* means the Soybean, Promotion, Research, and Consumer Information Act set forth in title XIX, subtitle E, of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624), and any amendments thereto.

##### § 1220.601 Administrator, AMS.

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

##### § 1220.602 Administrator, FSA.

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

##### § 1220.603 Farm Service Agency.

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

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

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

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

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

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

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

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

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

##### § 1220.608 Order.

*Order* means the Soybean Promotion and Research Order.

##### § 1220.609 Person.

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

##### § 1220.610 Producer.

*Producer* means any person engaged in the growing of soybeans in the United States who owns or who shares the ownership and risk of loss of such soybeans.

##### § 1220.611 Public notice.

*Public notice* means a notice published in the **Federal Register**, not later than 60 days prior to the last day of the Request for Referendum period, that provides information regarding the Request for Referendum period. Such notification shall include, but not be limited to explanation of producers' rights, procedures to request a referendum, the purpose, dates of the Request for Referendum period, location for conducting the Request for Referendum, and eligibility requirements. Additionally, the United Soybean Board is required to provide producers, in writing, this same information during the same time period. Other pertinent information shall also be provided, without advertising expense, through press

releases by State and county FSA offices and other appropriate Government offices, by means of newspapers, electronic media, county newsletters, and the like.

##### § 1220.612 Representative period.

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

##### § 1220.613 Secretary.

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

##### § 1220.614 Soybeans.

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

##### § 1220.615 State and United States.

*State and United States* include the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

#### Procedures

##### § 1220.616 General.

An opportunity to request a referendum shall be provided to U.S. soybean producers to determine whether eligible producers favor the conduct of a referendum and the Request for Referendum shall be carried out in accordance with this subpart.

(a) The opportunity to request a referendum shall be provided at the county FSA offices.

(b) If the Secretary determines, based on results of the Request for Referendum that no less than 10 percent (not in excess of one-fifth of which may be producers in any one State) of all producers have requested a referendum on the Order, a referendum will be held within 1 year of that determination.

(c) If the Secretary determines, based on the results of the Request for Referendum, that the requirements in paragraph (b) of this section are not met, a referendum will not be conducted.

(d) For purposes of paragraphs (b) and (c) of this section, the number of soybean producers in the United States is determined to be 663,880.

##### § 1220.617 Supervision of the process for requesting a referendum.

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

**§ 1220.618 Eligibility.**

(a) *Eligible producers.* Each person who was a producer and provides evidence that they or the producer entity they represent has paid an assessment on soybeans during the representative period is provided the opportunity to request a referendum. Each producer entity is entitled to only one request.

(b) *Proxy Registration.* Proxy registration is not authorized, except that an officer or employee of a corporate producer, or any guardian, administrator, executor, or trustee of a producer's estate, or an authorized representative of any eligible producer entity (other than an individual producer), such as a corporation or partnership, may request a referendum on behalf of that entity. Any individual who requests a referendum on behalf of any producer entity, shall certify that he or she is authorized by such entity to take such action.

(c) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation engaged in the production of soybeans as a producer entity shall be entitled to make only one request for a referendum; provided, however, that any individual member of a group who is an eligible producer separate from the group may request a referendum separately.

**§ 1220.619 Time and Place for Requesting a Referendum.**

(a) The opportunity to request a referendum shall be provided during a 4-week period beginning and ending on a date determined by the Secretary. Eligible persons shall have the opportunity to request a referendum by following the procedures in § 1220.622 during the normal business hours of each county FSA office.

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

(c) Each eligible person shall request a referendum in the county FSA office where FSA maintains and processes the producer's, corporation's, or other entities administrative farm records. For the producer, corporation, or other entity not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer, corporation, or other legal entity owns or rents land. An individual or authorized representative of a corporation who grows soybeans in

more than one county would request a referendum in the county FSA office where the individual or corporation or other entity does most of its business.

**§ 1220.620 Facilities.**

Each county FSA office will provide:

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

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

**§ 1220.621 Certification and request form.**

Form LS-51-1 shall be used to request a referendum and certify producer eligibility. The form does not require a "yes" or "no" vote. Individual producers and representatives of other producer entities should read the form carefully. By completing and signing the form, the individual simultaneously certifies eligibility and requests that a referendum be conducted.

**§ 1220.622 Certification and request procedures.**

(a) To request that a referendum be conducted, each eligible producer shall, during the Request for Referendum period, be provided the opportunity to request a referendum during a specified period announced by the Secretary.

(1) Each eligible producer shall be required to complete form LS-51-1 in its entirety and sign it. The producer must legibly print his/her name and, if applicable, the producer entity represented, address, county, and telephone number. The producer must read the certification statement on form LS-51-1 and sign it certifying that:

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

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

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

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

(3) Only a completed and signed form LS-51-1 accompanied by

documentation showing that soybean assessments were paid during the representative period shall be considered a valid request for a referendum.

(b) To request a referendum, eligible producers may obtain form LS-51-1 in-person, by mail, or by facsimile during the request for referendum period from the county FSA office where FSA maintains and processes the producer's, corporation's, or other entity's administrative farm records. For the producer, corporation, or other entity not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer, corporation, or other entity owns or rents land. Eligible producers may also obtain form LS-51-1 via the Internet at [www.ams.usda.gov/lsg/mpb/rp-soy.htm](http://www.ams.usda.gov/lsg/mpb/rp-soy.htm). For those persons who chose to obtain form LS-51-1 via the Internet, the completed form and required documentation must be submitted to the county FSA office where FSA maintains and process the producer's, corporation's, or other entity's administrative farm records. For producer, corporation, or other entity not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer, corporation, or other entity owns or rents land.

(c) Producers or producer entities may return form LS-51-1 and the accompanying documentation in-person, by mail, or facsimile to the appropriate county FSA office. Form LS-51-1 returned in-person or by facsimile, must be received in the appropriate county FSA office prior to the close of the work day on the final day of the Request for Referendum period to be considered a valid request. Form LS-51-1 and the accompanying documentation returned by mail must be postmarked no later than midnight of the final day of the Request for Referendum period and must be received in the county FSA office prior to the start of canvassing Form LS 51-1.

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

**§ 1220.623 Canvassing requests.**

(a) Canvassing of Form LS-51-1 shall take place at the opening of county FSA offices on the 5th business day following the Request for Referendum

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

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

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

(2) *Number of ineligible requests for a referendum.* If FSA cannot determine that a producer is eligible based on the submitted documentation or if the producer fails to submit the required documentation, the producer shall be determined to be ineligible. FSA shall notify ineligible producers in writing as soon as practicable but no later than the 8th business day following the final day of the Request for Referendum period.

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

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

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

(1) Form LS-51-1 is not signed or all required information has not been provided;

(2) Form LS-51-1 and supporting documentation returned in-person or by facsimile was not received by the last business day of the Request for Referendum period;

(3) Form LS-51-1 and supporting documentation returned by mail was not postmarked by midnight of the final day of the Request for Referendum period;

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

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

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

#### **§ 1220.624 Confidentiality.**

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

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

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

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

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

(2) Number of ineligible producers requesting a referendum;

(3) Number of eligible producers requesting a referendum;

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

(5) Number of invalid requests for a referendum.

#### **§ 1220.626 FSA county office report.**

The county FSA office report shall be certified as accurate and complete by the CED or designee, acting on behalf of the Administrator, AMS, as soon as may be reasonably possible, but in no event later than 18th business day following the final day of the specified period, have prepared and certified the county summary of requests on a form provided by the Administrator, FSA. Each county FSA office shall transmit the results in its county to the FSA State office. The

results in each county may be made available to the public upon notification by the Administrator, FSA, that the final results have been released by the Secretary. A copy of the report shall be posted for 30 days following the date of notification by the Administrator, FSA, in the county FSA office in a conspicuous place accessible to the public. One copy shall be kept on file in the county FSA office for a period of at least 12 months after notification by FSA that the final results have been released by the Secretary.

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

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

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

(a) The Administrator, FSA, shall submit to the Administrator, AMS, the reports from all State FSA offices. The Administrator, AMS, shall tabulate the results of the Request for Referendum. USDA will issue an official press release announcing the results of the Request for Referendum and publish the same results in the **Federal Register**. In addition, USDA will post the official results at the following Web site: <http://www.ams.usda.gov/lsg/mpb/rp-soy.htm>. Subsequently, State reports and related papers shall be available for public inspection upon request during normal business hours in the Marketing Programs Branch office, Livestock and Seed Program, AMS, USDA, Room 2638-S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems necessary, a State report or county report shall be reexamined and checked by such persons who may be designated by the Secretary.

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

Each FSA CED will place in sealed containers marked with the identification of the "Request for Soybean Referendum," all of the form LS-51-1's along with the accompanying documentation and county summaries. Such records will be placed in a secure location under the custody of the FSA CED for a period of not less than 12 months after the date of notification by



the Administrator, FSA, that the final results have been announced by the Secretary. If the county FSA office receives no notice to the contrary from the Administrator, FSA, by the end of the 12 month period as described above, the CED or designee shall destroy the records.

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

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

Dated: March 18, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

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**BILLING CODE 3410-02-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 23**

[Docket No. CE204; Special Conditions No. 23-144-SC]

#### **Special Conditions: Centex Aerospace, Inc; Diamond DA20-C1 Katana, Installation of Full Authority Digital Engine Control (FADEC) System and the Protection of the System From the Effects of High Intensity Radiated Fields (HIRF)**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued to CenTex Aerospace, Inc., 7805 Karl May Drive, Waco, Texas 76708 for the Diamond DA20-C1 Katana airplane. This airplane will have a novel or unusual design feature associated with the installation of an engine that uses an electronic engine control system in place of the engine's mechanical system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATE:** The effective date of these special conditions is: March 16, 2004. Comments must be received on or before April 22, 2004.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration (FAA),

Regional Counsel, ACE-7, Attention: Rules Docket, Docket No. CE204, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE204. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Wes Ryan, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE-111, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816-329-4127, fax: 816-329-4090.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

#### **Comments Invited**

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE204." The postcard will be date stamped and returned to the commenter.

#### **Background**

On December 19, 2002, CenTex Aerospace applied for a Supplemental Type Certificate for the Diamond DA20-C1 Katana. The DA20-C1 is powered by

a reciprocating engine that is equipped with an electronic engine control system with full authority capability in place of the hydromechanical control system.

#### **Type Certification Basis**

Under the provisions of 14 CFR 21.101, CenTex Aerospace must show that the DA20-C1 meets the applicable provisions of the original certification basis of the DA20-C1, as listed on Type Certificate No. TA4CH, issued April 6, 1998; exemptions, if any; and the special conditions adopted by this rulemaking action. The DA20-C1 was originally certified under 14 CFR 21.29 and 14 CFR part 23 effective February 1, 1965, as amended by Amendments 23-1 through 23-42; JAR-VLA effective April 26, 1990, through Amendment VLA/92/1, effective January 1, 1992, used as a safety equivalence to part 23, as provided by AC 23-11; 14 CFR part 36, dated December 1, 1969, as amended by current amendment as of the date of type certification; Equivalent Level of Safety for part 23, § 23.903(a)(1) (reference Finding ACE-95-1, dated December 2, 1994); and the terms of this Special Condition.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 23) do not contain adequate or appropriate safety standards for the DA20-C1 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the certification basis for the supplemental type certification basis in accordance with § 21.101. Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other models that are listed on the same type certificate to incorporate the same novel or unusual design features, the special conditions would also apply under the provisions of § 21.101.

#### **Novel or Unusual Design Features**

The Diamond DA20-C1 will incorporate a novel or unusual design feature, an engine that includes an electronic control system with full authority digital engine control (FADEC) capability.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved high intensity radiated fields (HIRF) protection for electrical and electronic