

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.

**§ 1220.628 FSA State office report.**

Each FSA State office shall transmit to the Administrator, FSA, a report summarizing the data contained in each of the reports from the county FSA office on a State report form provided by the Administrator, FSA. The State FSA office shall maintain one copy of the summary where it shall be available for public inspection upon request for a period of not less than 12 months after the results have been released.

**§ 1220.629 Reporting results.**

(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. The Department will issue an official press release announcing the results of the Request for Referendum and publish the same results in the FEDERAL REGISTER. 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 2627 South Agriculture Building, 14th and 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.

**§ 1220.630 Disposition of records.**

Forms LS-51-1 and LS-51-2 and county reports shall be placed in sealed con-

tainers under the supervision of the CED or designee, acting on behalf of the Administrator, AMS, and such container shall be marked with "Request for Soybean Referendum." Such records shall remain in the secured custody of the CED or designee 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, the CED or designee shall destroy the records.

**§ 1220.631 Instructions and forms.**

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

**PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION**

**Subpart A—Pork Promotion, Research, and Consumer Information Order**

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- 1230.30 Establishment and membership.

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AUTHORITY: 7 U.S.C. 4801-4819.

### Subpart A—Pork Promotion, Research, and Consumer Information Order

SOURCE: 51 FR 31903, Sept. 5, 1986, unless otherwise noted.

#### DEFINITIONS

##### § 1230.1 Act.

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

##### § 1230.2 Department.

*Department* means the United States Department of Agriculture.

##### § 1230.3 Secretary.

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

##### § 1230.4 Board.

*Board* means the National Pork Board established pursuant to §1230.50.

##### § 1230.5 Consumer information.

*Consumer information* means an activity intended to broaden the understanding of the sound nutritional attributes of pork and pork products, including the role of pork and pork products in a balanced, healthy diet.

##### § 1230.6 Council.

*Council* means the National Pork Producers Council, a nonprofit corporation of the type described in section 501(c)(5) of the Internal Revenue Code of 1954 and incorporated in the State of Iowa.

##### § 1230.7 Customs Service.

*Customs Service* means the United States Customs Service of the United States Department of Treasury.

##### § 1230.8 Delegate Body.

*Delegate Body* means the National Pork Producers Delegate Body established pursuant to §1230.30.

##### § 1230.9 Fiscal period.

*Fiscal period* means the 12-month period ending on December 31 or such other consecutive 12-month period as the Secretary or Board may determine.

##### § 1230.10 Imported.

*Imported* means entered, or withdrawn from a warehouse for consumption, in the customs territory of the United States.

##### § 1230.11 Imported pork and pork products.

*Imported pork and pork products* means products which are imported into the United States which the Secretary determines contain a substantial amount of pork, including those products which have been assigned one or more of the following numbers in Schedule 1 of the Tariff Schedules of the United States Annotated (1985): 106.4020; 106.4040; 106.8000; 106.8500; 107.1000; 107.1500; 107.3020; 107.3040; 107.3060; 107.3515; 107.3525; 107.3540; and 107.3560.

##### § 1230.12 Importer.

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

##### § 1230.13 Market.

*Market* means to sell, slaughter for sale, or otherwise dispose of a porcine animal in commerce.

##### § 1230.14 Market value.

*Market value* means, with respect to porcine animals which are sold, the price at which they are sold. With respect to porcine animals slaughtered for the sale by the producer, the term means the most recent annual seven-market average for barrows and gilts, as published by the Department. With respect to imported porcine animals,

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the term means the declared value. With respect to imported pork and pork products, the term means an amount which represents the value of the live porcine animals from which the pork or pork products were derived, based upon the most recent annual seven-market average for barrows and gilts, as published by the Department.

**§ 1230.15 Part and subpart.**

*Part* means the Pork Promotion, Research, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the aforesaid order shall be a "subpart of such part.

**§ 1230.16 Person.**

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

**§ 1230.17 Plans and projects.**

*Plans and projects* means promotion, research, and consumer information plans, studies, or projects.

**§ 1230.18 Porcine animal.**

*Porcine animal* means a swine, that is raised as (a) a feeder pig, that is, a young pig sold to another person to be finished for slaughtering over a period of more than 1 month; (b) for breeding purposes as seed stock and included in the breeding herd; and (c) a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

**§ 1230.19 Pork.**

*Pork* means the flesh of a porcine animal.

**§ 1230.20 Pork product.**

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

**§ 1230.21 Producer.**

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

**§ 1230.22 Promotion.**

*Promotion* means any action, including but not limited to paid advertising

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and retail or food service merchandising, taken to present a favorable image for porcine animals, pork, or pork products to the public, or to educate producers with the intent of improving the competitive position and stimulating sales of porcine animals, pork, or pork products.

**§ 1230.23 Research.**

*Research* means any action designed to advance, expand, or improve the image, desirability, nutritional value, usage, marketability, production, or quality of porcine animals, pork, or pork products, including the dissemination of the results of such research.

**§ 1230.24 State.**

*State* means each of the 50 States.

**§ 1230.25 State association.**

*State association* means the single organization of producers in a State that is organized under the laws of that State and is recognized by the chief executive officer of such State as representing such State's producers. If no such organization exists in a State as of January 1, 1986, the Secretary may recognize an organization that represents not fewer than 50 producers who market annually an aggregate of not less than 10 percent of the pounds of porcine animals marketed in such State. The Secretary may cease to recognize a State association and instead recognize another organization of producers in a State as that State's association if the Secretary determines either that a majority of the members of the existing State association are not producers or that a majority of the members of the other organization seeking recognition are producers and that such organization better represents the economic interests of producers.

**§ 1230.26 State where produced.**

*State where produced* means with respect to a porcine animal marketed as a feeder pig or as breeding stock, the State in which that porcine animal was born, and with respect to a porcine animal that is marketed as a market hog, the State in which that porcine animal was fed for market.

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### NATIONAL PORK PRODUCERS DELEGATE BODY

#### § 1230.30 Establishment and membership.

(a) There is hereby established a National Pork Producers Delegate Body which shall consist of producers and importers appointed by the Secretary.

(b)(1) At least two producer members shall be allocated to each State, but any State that has more than 300 but less than 601 shares shall receive three producer members; each State with more than 600 but less than 1,001 shares shall receive four producer members and each State with more than 1,000 shares shall receive an additional member in excess of four for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(2) [Reserved]

(3) In each fiscal period, shares shall be assigned to each State on the basis of one share for each \$1,000 (rounded to the nearest \$1,000) of the net amount of assessments attributable to such State.

(c)(1) The number of importer members to be appointed shall be determined by allocating three such members for the first 1,000 shares. Importers shall receive an additional member in excess of three for each 300 shares in excess of 1,000 shares, rounded to the nearest 300.

(2) [Reserved]

(3) In each fiscal period, shares shall be assigned to importers on the basis of one share for each \$1,000 (rounded to the nearest \$1,000) of the net amount of assessments attributable to importers.

[51 FR 31903, Sept. 5, 1986, as amended at 60 FR 58501, Nov. 28, 1995]

#### § 1230.31 Nomination and appointment of producer members.

(a) [Reserved]

(b) Delegate Body nominations for appointment as producer members shall be submitted to the Secretary in the number requested by the Secretary by each State association either after an election conducted in accordance with § 1230.32 and by nominating the producers who receive the highest number of votes in such State; or pursuant to a selection process that is approved by the Secretary, is given public-notice at least one week in advance

by publication in a newspaper or newspapers of general circulation in such State and in pork production and agriculture trade publications, and provides complete and equal access to every producer who has paid all assessments due under this subpart and who has not demanded any refund of an assessment paid pursuant to this subpart in the period since the selection of the previous Delegate Body;

(c) The Secretary shall appoint the producer members of each Delegate Body from the nominations submitted in accordance with this section, except that if a State association does not submit nominations in the required manner or number, or if a State has no State association, the Secretary shall select producer members from that State after consultation with representatives of the pork industry in that State.

[51 FR 31903, Sept. 5, 1986, as amended at 60 FR 58501, Nov. 28, 1995]

#### § 1230.32 Conduct of election.

If a State association selects nominees for appointment to the Delegate Body through an election, it shall be conducted in the following manner:

(a) Elections shall be administered by the Board and the Board shall determine the timing of any elections.

(b) Producers who are residents of that State may be named as candidates for election to be nominees for appointment to the Delegate Body:

(1) By a nominating committee of producers in that State appointed by the Board; or

(2) The number of pork producers in a State shall be determined by the Department based on the latest available Department information, which tabulates by State the number of farming operations with porcine animals.

(c) To be eligible to vote in an election to nominate producer members from a State, a person must:

(1) Be a producer who is a resident of that State;

(2) Have paid all assessments due pursuant to this subpart; and

(3) Not have demanded any refund of an assessment paid pursuant to this subpart in the period since the selection of the previous Delegate Body.

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(d) The Board shall cause notices of any election to be published at least one week prior to the election in a newspaper or newspapers of general circulation in that State, and in pork production and agricultural trade publications. The notices shall set forth the period of time and places for voting and such other information as the Board considers necessary.

(e) The identity of any person who voted and the manner in which any person voted shall be kept confidential.

[51 FR 31903, Sept. 5, 1986, as amended at 53 FR 30245, Aug. 11, 1988]

### § 1230.33 Appointment of importer members.

The Secretary shall appoint the importer members of each Delegate Body after consultation with importers.

### § 1230.34 Term of office.

(a) The members of the Delegate Body shall serve for terms of one year, except that the members of the initial Delegate Body shall serve only until the completion of the nomination and appointment process of the succeeding Delegate Body.

(b) Each member of the Delegate Body shall serve until that member's term expires, or a successor is appointed, whichever occurs later.

### § 1230.35 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Delegate Body, the Secretary shall appoint a successor for the unexpired term of such member from nominations made either by the appropriate State association or by importers, depending upon whether the vacancy is a producer or importer vacancy.

### § 1230.36 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Delegate Body, but only if that majority is also entitled to cast a majority of the shares (including fractions thereof). Any action of the Delegate Body, including any motion or nomination presented to it for a vote, shall require a majority vote, that is, the concurring votes of a majority of the shares cast on that ac-

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tion. The Delegate Body shall give timely notice of its meetings. The Delegate Body shall give the Secretary the same notice of its meetings as it gives to its members in order that the Secretary or a representative of the Secretary may attend meetings.

(b) The number of votes that may be cast by a producer member if present at a meeting shall be equal to the number of shares attributable to the State of such member divided by the number of producer members from such State. The number of votes that may be cast by an importer member if present at a meeting shall be equal to the number of shares allocated to importers divided by the number of importer members.

### § 1230.37 Officers.

The Delegate Body shall elect its Chairperson by a majority vote at the first annual meeting, but at each annual meeting after the first, the President of the Board shall serve as the Delegate Body's Chairperson.

### § 1230.38 Compensation and reimbursement.

The members of the Delegate Body shall serve without compensation but may be reimbursed by the Board for actual transportation expenses incurred by them in exercising their powers and duties under this subpart. Such expenses shall be paid from funds received by the Board pursuant to § 1230.72.

### § 1230.39 Powers and duties of the Delegate Body.

The Delegate Body shall have the following powers and duties:

(a) To meet annually;

(b) To recommend the rate of assessment prescribed by the initial order and any increase in such rate;

(c) To determine the percentage of the net assessments attributable to porcine animals produced in a State that each State association shall receive; and

(d) To nominate not less than 23 persons, including producers from a minimum of 12 States or importers, for appointment to the initial Board and not less than one and one-half persons (rounded up to the nearest person) for

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each vacancy on the Board that requires nominations thereafter. Each nomination shall be by a majority vote of the Delegate Body voting in person in accordance with §1230.36.

### NATIONAL PORK BOARD

#### § 1230.50 Establishment and membership.

There is hereby established a National Pork Board of 15 members consisting of producers representing at least 12 States or importers appointed by the Secretary from nominations submitted pursuant to §1230.39(d). The Board shall be deemed to be constituted once the Secretary makes the appointments to the Board.

#### § 1230.51 Term of office.

(a) The members of the Board shall serve for terms of three years, except that the members appointed to the initial Board shall be designated for, and shall serve terms as follows: One-third of such members shall serve for one year terms; One-third shall serve for two year terms; and the remaining One-third shall serve for three year terms.

(b) Each member of the Board shall serve until the member's term expires, or until a successor is appointed, unless the member is removed pursuant to §1230.55(b).

(c) No member shall serve more than two consecutive terms provided that those members serving an initial term of one year are eligible to serve two additional consecutive terms, but in no event, more than seven years in total.

(d) The first year of the terms of the initial Board shall begin immediately on appointment by the Secretary and continue until July 1, 1988. In subsequent years, the term of office shall begin on July 1.

#### § 1230.52 Nominations.

Nominations for members of the Board shall be made by the Delegate Body in accordance with §1230.39(d).

#### § 1230.53 Nominee's agreement to serve.

Any person nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with the Council or a State association or any organization that has a contract with the Board and thereafter disclose, at any time while serving on the Board, any relationship with any organization that applies to the Board for a contract; and

(c) Withdraw from participation in deliberations, decisionmaking, or voting on matters concerning any entity referred to in paragraph (b) of this section, if an officer or member of the executive committee of such entity.

#### § 1230.54 Appointment.

From the nominations submitted pursuant to §1230.39(d), the Secretary shall appoint 15 producers or importers as members of the Board, but in no event shall the Secretary appoint producer members representing fewer than 12 States.

#### § 1230.55 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor for the unexpired term of such member from the most recent list of nominations made by the Delegate Body.

(b) If a member of the Board fails or refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that that member be removed from office. If the Secretary finds that the recommendation of the Board demonstrates adequate cause, the Secretary shall remove such member from office. A person appointed under this part or any employee of the Board may be removed by the Secretary if the Secretary determines that the person's continued

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service would be detrimental to the purposes of the Act.

**§ 1230.56 Procedure.**

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present and voting. The Board shall give timely notice of its meetings. The Board shall give the Secretary the same notice of its meetings, including the meetings of its committees, as it gives to its members in order that the Secretary, or a representative of the Secretary, may attend the meetings.

(b) The Board may take action upon the concurring votes of a majority of its members by mail, telephone, telegraph or by other means of communication when, in the opinion of the President of the Board, such action must be taken before a meeting can be called. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing and recorded in the Board minutes. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

**§ 1230.57 Compensation and reimbursement.**

The members of the Board shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the exercise of their powers and the performance of their duties under this subpart. Such expenses shall be paid from funds received by the Board pursuant to § 1230.72.

**§ 1230.58 Powers and duties of the Board.**

The Board shall have the following powers and duties:

(a) To meet not less than annually, and to organize and elect from among its members, by majority vote, a President and such other officers as may be necessary;

(b) To receive and evaluate, or, on its own initiative, develop, and budget for proposals for plans and projects and to submit such plans and projects to the Secretary for approval;

(c) To administer directly or through contract the provisions of this subpart in accordance with its terms and provisions;

(d) To develop and submit to the Secretary for the Secretary's approval, plans and projects conducted either by the Board or others;

(e) To prepare and submit to the Secretary for the Secretary's approval, which is required for the following to be implemented:

(1) Budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including the projected cost of plans and projects to be conducted by the Board directly or by way of contract or agreement; and

(2) The budget, plans, or projects for which State associations are to receive funds under § 1230.72, including a general description of the proposed plan and project contemplated therein;

(f) With the approval of the Secretary, to enter into contracts or agreements with any person for the development and conduct of activities authorized under this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to § 1230.71. Any such contract or agreement shall provide that:

(1) The contracting party shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its relevant transactions and make periodic reports to the Board of relevant activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party;



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(g) To appoint or employ staff persons as it may deem necessary, to define the duties and determine the compensation of each, to protect the handling of Board funds through fidelity bonds, and to conduct routine business.

(h) To disseminate information to or communicate with producers or State associations through programs or by direct contact utilizing the public postage system or other systems;

(i) To select committees and subcommittees of Board members and to adopt such rules and by laws for the conduct of its business as it may deem advisable;

(j) To utilize advisory committees of persons other than Board members to assist in the development of plans or projects and pay the reasonable expenses and fees of the members of such committees;

(k) To prescribe rules and regulations necessary to effectuate the terms and provisions of this subpart;

(l) To recommend to the Secretary amendments to this subpart;

(m) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under §1230.71 in, and only in, an obligation of the United States, a general obligation of any State or any political subdivision thereof, an interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or an obligation fully guaranteed as to principal and interest by the United States.

(n) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and prepare and submit such reports as the Secretary may prescribe from time to time, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(o) To prepare and make public and available to producers and importers at least annually, a report of its activities carried out and an accounting of funds received and expended;

(p) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards at the end of each fiscal period and at

such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;

(q) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(r) To submit to the Secretary such information pursuant to this subpart as the Secretary may request; and

(s) To carry out an effective and coordinated program of promotion, research, and consumer information designed to strengthen the position of the pork industry in the marketplace and maintain, develop, and expand markets for pork and pork products.

[51 FR 31903, Sept. 5, 1986, as amended at 53 FR 30245, Aug. 11, 1988]

### PROMOTION, RESEARCH, AND CONSUMER INFORMATION

#### § 1230.60 Promotion, research, and consumer information.

(a) The Board shall receive and evaluate, or, on its own initiative, develop, and submit to the Secretary for approval, any plans and projects. Such plans and projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans and projects for promotion, research, and consumer information with respect to pork and pork products designed to strengthen the position of the pork industry in the marketplace and to maintain, develop, and expand domestic and foreign markets for pork and pork products;

(2) The establishment and conduct of research and studies with respect to the sale, distribution, marketing, and utilization of pork and pork products and the creation of new products thereof, to the end that marketing and utilization of pork and pork products may be encouraged, expanded, improved, or made more acceptable.

(b) Each plan and project shall be periodically reviewed or evaluated by the Board to ensure that the plan and project contributes to an effective and coordinated program of promotion, research, and consumer information. If it is found by the Board that any such plan and project does not further the purposes of the Act, the Board shall terminate such plan and project.

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(c) No plan or project shall make a false or misleading claim on behalf of pork or a pork product or a false or misleading statement with respect to an attribute or use of a competing product.

(d) No plan or project shall undertake to advertise or promote pork or pork products by private brand or trade name unless such advertisement or promotion is specifically approved by the Board, with the concurrence of the Secretary.

### EXPENSES AND ASSESSMENTS

#### § 1230.70 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve that would permit an effective promotion, research, and consumer information program to continue in years when the amount of assessments may be reduced) as the Secretary finds are reasonable and likely to be incurred by the Board for its administration, maintenance, and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart, including financing plans and projects. Such expenses shall be paid from assessments collected pursuant to § 1230.71 and other funds available to the Board, including donations.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to § 1230.71, for reasonable administrative expenses incurred by the Department with respect to this subpart after January 1, 1986, including any expenses reasonably incurred for the conduct of elections of nominees for appointment to the initial Delegate Body and for the conduct of referenda.

#### § 1230.71 Assessments.

(a)(1) Each producer producing in the United States a porcine animal raised as a feeder pig that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a feeder pig.

(2) Each producer producing in the United States a porcine animal raised for slaughter that is sold shall pay an assessment on that animal, unless such

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producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a market hog.

(3) Each producer producing in the United States a porcine animal raised for slaughter that such producer slaughters for sale shall pay an assessment on that animal unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a market hog.

(4) Each producer producing in the United States a porcine animal raised for breeding stock that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid by a person on that animal as breeding stock.

(5) Each importer importing a porcine animal, pork, or pork product into the United States shall pay an assessment on that porcine animal, pork, or pork product, unless such importer demonstrates to the Board by appropriate documentation that an assessment was previously paid for that porcine animal, pork, or pork product.

(b)(1) Each purchaser of a porcine animal raised by a producer as a feeder pig or market hog shall collect an assessment on such porcine animal if an assessment is due pursuant to paragraph (a) of this section, and shall remit that assessment to the Board. For the purposes of collection and remittance of assessments, any person engaged as a commission merchant, auction market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

(2) Assessments on porcine animals raised as breeding stock which are sold by a commission merchant, auction, market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be collected and remitted by the commission merchant, auction market, or livestock market selling such porcine animals.

(3) Each producer of porcine animals slaughtered for sale by the producer or

sold directly to a consumer in connection with a custom slaughter operation shall remit an assessment to the Board if an assessment is due pursuant to paragraph (a) of this section.

(4) Assessments on domestic porcine animals shall be remitted in the form of a negotiable instrument made payable to the "National Pork Board," which, together with the reports required by §1230.80, shall be sent to the address designated by the Board.

(5) Each importer of a porcine animal, pork, or pork product shall remit an assessment to the Customs Service at the time such porcine animal, pork, or pork product is imported or in such manner as may be established by regulations prescribed by the Board and approved by the Secretary, if an assessment is due pursuant to paragraph (a) of this section.

(c) The initial rate of assessment shall be 0.25 percent of market value.

(d) The rate of assessment may, upon the recommendation of the Delegate Body, be increased by regulations prescribed by the Board and approved by the Secretary by no more than 0.1 percent of such market value per fiscal period to a total of not more than 0.5 percent of market value.

(e) Assessments on imported pork and pork products shall be expressed in an amount per pound for each type of pork or pork product subject to assessment, which shall be established by regulations prescribed by the Board and approved by the Secretary.

[51 FR 31903, Sept. 5, 1986; 51 FR 36383, Oct. 10, 1986; 53 FR 1910, Jan. 25, 1988; 53 FR 30245, Aug. 11, 1988; 56 FR 6, Jan. 2, 1991]

#### § 1230.72 Distribution of assessments.

Assessments remitted to the Board shall be distributed as follows:

(a) Each State association shall receive on a monthly basis, a percentage determined by the Delegate Body or 16.5 percent, whichever is higher, of the net assessments attributable to that State. The net assessments attributable to a State is the total amount of assessments received from producers in a State.

(b) A State association which was conducting a pork promotion program in the period from July 1, 1984 to June 30, 1985, shall receive additional

amounts at such times as the Board may determine, so that the total amount received on an annual basis would be equal to the amount that would have been collected in such State pursuant to the pork promotion program in existence in such State from July 1, 1984, to June 30, 1985, had the porcine animals subject to assessment, been produced from July 1, 1984, to June 30, 1985, and been subject to the rates of assessment then in effect from such State to the Council and other national entities involved in pork promotion, research, and consumer information. This paragraph shall apply to a State association only if the annual amount determined under this paragraph would be greater than the annual amount determined under paragraph (a) of this section.

(c) The Council shall receive on a monthly basis 35 percent of the net assessments until after the referendum is conducted, and 25 percent thereafter and until 12 months after the referendum.

[51 FR 31903, Sept. 5, 1986, as amended at 60 FR 58501, Nov. 28, 1995]

#### § 1230.73 Uses of distributed assessments.

(a) Each State association shall use its distribution of assessments pursuant to §1230.72, as well as any proceeds from the investment of such funds pending their use, for financing plans and projects and the administrative expenses incurred in connection therewith, including the cost of administering nominations and elections of producer members of the Delegate Body.

(b) The Council shall use its distribution of assessments pursuant to §1230.72, as well as any proceeds from the investment of such funds pending their use, for financing plans and projects and the Council's administrative expenses.

(c) The Board shall use its distribution of assessments pursuant to §1230.72, as well as any proceeds from the investment of such funds pending their use, for:

- (1) Financing plans and projects;
- (2) The Board's expenses for the Board's administration, maintenance,

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and functioning as authorized by the Secretary;

(3) Accumulation of a reserve not to exceed one fiscal period's budget to permit continuation of an effective promotion, research, and consumer information program in years when assessment amounts may be reduced; and

(4) The Secretary's administrative costs in carrying out this part.

### § 1230.74 Prohibited use of distributed assessments.

(a) No funds collected under this subpart shall in any manner be used for the purpose of influencing legislation as that term is defined in section 4911 (d) and (e)(2) of the Internal Revenue Code of 1954, or for the purpose of influencing governmental policy or action except in recommending to the Secretary amendments to this part.

(b) Organizations receiving distributions of assessments from the Board shall furnish the Board with annual financial statements audited by a certified public accountant of all funds distributed to such organizations pursuant to this subpart and any other reports as may be required by the Secretary or the Board in order to verify the use of such funds.

[51 FR 31903, Sept. 5, 1986, as amended at 53 FR 30245, Aug. 11, 1988; 60 FR 33683, June 29, 1995]

### § 1230.75 Adjustment of accounts.

Whenever the Board or the Department determines, through an audit of a person's reports, records, books or accounts or through some other means that additional money is due the Board or that money is due such person from the Board, such person shall be notified of the amount due. Any amount due the Board shall be remitted to the Board by the next date for remitting assessments as provided in § 1230.71(b)(3). Any overpayment to the Board shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months except that the Board shall make prompt payment when an overpayment cannot be adjusted by a credit.

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### § 1230.76 Charges.

Any assessment not paid when due shall be increased 1.5 percent each month beginning with the day following the date such assessment was due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

### § 1230.77 [Reserved]

#### REPORTS, BOOKS, AND RECORDS

### § 1230.80 Reports.

Each person responsible for collecting or remitting any assessment under § 1230.71(b) shall report at the time for remitting assessments to the Board the following information:

(a) The quantity and market value of the porcine animals subject to assessment;

(b) The amount of assessment collected;

(c) The month the assessment was collected;

(d) The State where the porcine animals were produced; and

(e) Such other information as may be required by regulations prescribed by the Board and approved by the Secretary.

### § 1230.81 Books and records.

Each person who is subject to this subpart shall maintain and, during normal business hours, make available for inspection by employees of the Board and the Secretary such books and records as are necessary to carry out the provision of this subpart, including such records as are necessary to verify any required reports. Such records shall be retained for at least two years

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beyond the fiscal period of their applicability.

### § 1230.82 Confidential treatment.

All information obtained from the books, records or reports required to be maintained under §§ 1230.80 and 1230.81 of this subpart shall be kept confidential by all persons, including employees and agents and former employees and agents of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and all employees and all former officers and employees of contracting parties having access to such information, and shall not be available to Board members. Only those persons having a specific need for such information in order to effectively implement, administer, or enforce the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired shall be disclosed as the Secretary deems relevant and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to this subpart or of statistical data collected therefrom, which statements or data do not identify the information furnished by any person; or

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

#### MISCELLANEOUS

### § 1230.85 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in

the possession of, or under the control of, the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreement;

(3) From time to time account for all receipts and disbursements and deliver all property on hand together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the plans and projects authorized pursuant to this subpart.

### § 1230.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

### § 1230.87 Personal liability.

No member or employee of the Board shall be held personally liable, either individually or jointly, in any way whatsoever to any person for errors in

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judgment, mistakes, or other acts of either commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

**§ 1230.88 Patents, copyrights, inventions, and publications.**

Any patents, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the United States Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications inure to the benefit of the Board as income and be subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, §1230.85 shall apply to determine disposition of all such property.

**§ 1230.89 Amendments.**

The Secretary may from time to time amend provisions of this part. Any interested person or organization affected by the provisions of the Act may propose amendments to the Secretary.

**§ 1230.90 Separability.**

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

**§ 1230.91 Paperwork Reduction Act assigned number.**

The information collection and recordkeeping requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter and have been assigned OMB Control Number 0851-0151.

**Subpart B—Rules and Regulations**

SOURCE: 53 FR 1911, Jan. 25, 1988, unless otherwise noted.

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DEFINITIONS

**§ 1230.100 Terms defined.**

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms in Subpart A of this part.

ASSESSMENTS

**§ 1230.110 Assessments on imported pork and pork products.**

(a) The following Harmonized Tariff Schedule (HTS) categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.0000 .....	1 0.40
0103.91.0000 .....	1 0.40
0103.92.0000 .....	1 0.40

<sup>1</sup> percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	Cents/lb	Cents/kg
0203.11.0000 .....	.25	.551150
0203.12.1010 .....	.25	.551150
0203.12.1020 .....	.25	.551150
0203.12.9010 .....	.25	.551150
0203.12.9020 .....	.25	.551150
0203.19.2010 .....	.29	.639334
0203.19.2090 .....	.29	.639334
0203.19.4010 .....	.25	.551150
0203.19.4090 .....	.25	.551150
0203.21.0000 .....	.25	.551150
0203.22.1000 .....	.25	.551150
0203.22.9000 .....	.25	.551150
0203.29.2000 .....	.29	.639334
0203.29.4000 .....	.25	.551150
0206.30.0000 .....	.25	.551150
0206.41.0000 .....	.25	.551150
0206.49.0000 .....	.25	.551150
0210.11.0010 .....	.25	.551150
0210.11.0020 .....	.25	.551150
0210.12.0020 .....	.25	.551150
0210.12.0040 .....	.25	.551150
0210.19.0010 .....	.29	.639334
0210.19.0090 .....	.29	.639334
1601.00.2010 .....	.34	.749564
1601.00.2090 .....	.34	.749564
1602.41.2020 .....	.37	.815702
1602.41.2040 .....	.37	.815702
1602.41.9000 .....	.25	.551150
1602.42.2020 .....	.37	.815702
1602.42.2040 .....	.37	.815702
1602.42.4000 .....	.25	.551150
1602.49.2000 .....	.34	.749564
1602.49.4000 .....	.29	.639334
1602.49.9000 .....	.29	.639334

[67 FR 58322, Sept. 16, 2002]

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### § 1230.111 Remittance of assessments on domestic porcine animals.

Assessments on domestic porcine animals shall be remitted to the National Pork Board pursuant to §1230.71(b) in accordance with the following remittance schedule.

(a) Monthly assessments totaling \$25 or more shall be remitted to the Board by the 15th day of the month following the month in which the porcine animals were marketed or by the 15th day following the end of a Board-approved, consecutive 4-week period in which the porcine animals were marketed.

(b) Assessments totaling less than \$25 during each month of a quarter in which the porcine animals were marketed may be accumulated and remitted by the 15th day of the month following the end of a quarter. The quarters shall be: January through March; April through June; July through September; October through December.

(c) Assessments totaling \$25 or more during any month of a quarter must be remitted by the 15th day of the month following the month of the quarter in which the assessments totaled \$25 or more, together with any unremitted assessments from the previous month(s) of the quarter, if applicable.

(d) Assessments collected during any calendar quarter and not previously remitted as described in paragraphs (b) or (c) of this section must be remitted by the 15th day of the month following the end of the quarter regardless of the amount.

[56 FR 6, Jan. 2, 1991]

### § 1230.112 Rate of assessment.

In accordance with §1230.71(d) the rate of assessment shall be 0.40 percent of market value.

[67 FR 58323, Sept. 16, 2002]

### § 1230.113 Collection and remittance of assessments for the sale of feeder pigs and market hogs.

Pursuant to the provisions of §1230.71, purchasers of feeder pigs or market hogs shall collect assessments from producers if an assessment is due and shall remit those assessments to the Board. Failure of the purchaser to collect such assessment from a producer shall not relieve the producer of

the obligation to pay the assessment. If the purchaser fails to collect the assessment when an assessment is due pursuant to §1230.71, the producer (seller) shall remit the total amount of assessments due to the Board as set forth in §1230.111.

[65 FR 7283, Feb. 14, 2000]

### § 1230.115 Submission of annual financial statements.

State Pork Producer Associations, as defined in §1230.25, that receive distributions of assessments pursuant to §1230.72 and that receive less than \$30,000 in assessments annually, may satisfy the requirements of §1230.74(b) by providing to the Board unaudited annual financial statements prepared by State association staff members or individuals who prepare annual financial statements, provided that two members of the State association attest to and certify such financial statements. Notwithstanding any provisions of the Order to the contrary, State associations that receive less than \$30,000 in distributed assessments annually and submit unaudited annual financial statements to the Board shall be required to submit an annual financial statement audited by a certified public accountant at least once every 5 years, or more frequently if deemed necessary by the Board or the Secretary. The Board may elect to conduct its own audit of the annual financial statements of State Pork Producer Associations that receive less than \$2,000 in distributed assessments annually, every 5 years in lieu of the required financial statements.

[60 FR 33683, June 29, 1995]

## MISCELLANEOUS

### § 1230.120 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0851-0151.

## Subpart C [Reserved]

**Subpart D—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body**

§ 1230.501–1230.512 [Reserved]

**Subpart E—Procedures for the Conduct of Referendum**

SOURCE: 65 FR 43508, July 13, 2000, unless otherwise noted.

DEFINITIONS

**§ 1230.601 Act.**

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

**§ 1230.602 Administrator, AMS.**

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

**§ 1230.603 Administrator, FSA.**

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

**§ 1230.604 Department.**

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

**§ 1230.605 Farm Service Agency.**

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

**§ 1230.606 Farm Service Agency County Committee.**

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

ed to act as the Farm Service Agency County Committee.

**§ 1230.607 Farm Service Agency County Executive Director.**

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

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

The term *Imported porcine animals, pork, and pork products* means those animals, pork, or pork products that are imported into the United States and subject to assessment under the harmonized tariff schedule numbers identified in §1230.110 of the regulations.

**§ 1230.609 Importer.**

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

**§ 1230.610 Order.**

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

**§ 1230.611 Porcine animal.**

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

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

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

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

**§ 1230.612 Person.**

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



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### § 1230.613 **Pork.**

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

### § 1230.614 **Pork product.**

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

### § 1230.615 **Producer.**

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

### § 1230.616 **Public notice.**

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

### § 1230.617 **Referendum.**

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

### § 1230.618 **Representative period.**

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

### § 1230.619 **Secretary.**

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

### § 1230.620 **State.**

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

### § 1230.621 **Voting period.**

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

## REFERENDUM

### § 1230.622 **General.**

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

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

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

### § 1230.623 **Supervision of referendum.**

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

### § 1230.624 **Eligibility.**

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

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

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

(3) Importers. Each importer who imports hogs, pigs, pork, or pork products during the representative period is entitled to cast one ballot. A group of individuals, such as members of a family, a partnership, or a corporation engaged in the importation of hogs, pigs, pork,

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or pork products will be entitled to only one vote; provided, however, that any member of a group may register to vote as a importer if he or she imports hogs, pigs, pork, or pork products in his or her own name.

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

**§ 1230.625 Time and place of registration and voting.**

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

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

**§ 1230.626 Facilities for registering and voting.**

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

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

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

(3) Copies of the Order for review.

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

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

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

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

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

**§ 1230.627 Registration form and ballot.**

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

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

(b) *Importers.* A combined registration and ballot form (Form LS-76) will be

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

**§ 1230.628 Registration and voting procedures for producers.**

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

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

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

(2) Each eligible producer who has not voted by means of an absentee ballot may cast a ballot in-person at the location and time set forth in §1230.625 and on September 19, 20, 21, 2000. Eligible producers who record their names

and addresses and, if applicable, the name and address of the corporation or other entity they are authorized to represent on the In-Person Voter Registration List (Form LS-75) will receive a combined registration and certification form printed on an envelope (Form LS-72-2) and a ballot (Form LS-72). Producers will enter the information requested on the combined registration and certification form/envelope (Form LS-72-2) as indicated above. Producers will then mark their ballots to indicate “yes” or “no.” Producers will place their completed ballots in an envelope marked “Pork Ballot” (Form LS-72-1), seal and place it in the completed and signed registration form/envelope marked “Pork Referendum” (Form LS-72-2), seal that envelope and personally place it in a box marked “Ballot Box” or other designated receptacle. Voting will be conducted on-site under the supervision of the county FSA County Executive Director (CED).

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

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

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or corporation or other entity does most of their business.

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

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

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

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

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

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

(7) Absentee ballots returned by mail have to be postmarked with a date not later than the last day of the in-person voting period, which is September 21,

2000, and be received in the county FSA office by the close of business on the 5th business day after the last day of the in-person voting period, which is September 28, 2000. Absentee ballots received after that date will be counted as invalid ballots. Upon receiving the "Pork Referendum" envelope (Form LS-73-1) containing the registration form and ballot, the county FSA CED will record the date the "Pork Referendum" envelope (Form LS-73-1) containing the absentee ballot was received in the FSA county office on the Absentee Voter Request List (Form LS-74) opposite the name of the producer voting absentee. The county FSA CED will place it, unopened, in a secure ballot box.

**§ 1230.629 Registration and voting procedures for importers.**

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

(b) When requesting a ballot, eligible importers will be required to submit a U.S. Customs Service Form 7501 showing that they paid the pork assessment during the representative period.

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

(d) The FSA headquarters office in Washington, DC, will enter on the Importer Ballot Request List (Form LS-

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77) the name and address of the importer requesting a ballot and the date of the request.

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

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

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

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

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

form and ballot, an FSA employee will record the date the "Pork Referendum" envelope containing the completed ballot was received in the FSA headquarters office in Washington, DC, on the Importer Ballot Request List (Form LS-77) directly opposite the voting importer's name. The FSA employee will place the "Pork Referendum" envelope, unopened, in a secure ballot box.

### § 1230.630 List of registered voters.

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

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

### § 1230.631 Challenge of votes.

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

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

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as the Secretary may direct or as otherwise required by law.

(c) *Who can be challenged.* Any producer having cast an in-person ballot or an absentee ballot whose name is posted on the In-Person Voter Registration List (Form LS-75) or the Absentee Voter Request List (Form LS-74) can be challenged. There is no challenge process for importers.

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

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

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

(g) *Appeal.* A person declared to be ineligible to register and vote by the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, can file an appeal at the FSA county office within 5 business days after the date of receipt of the letter of notification of ineligibility, but not later than November 2,

2000. The FSA county office shall send a producer's appeal by facsimile to the Administrator, AMS, on the date it is filed at the FSA county office or as soon as practical thereafter.

(h) An appeal will be determined by the Administrator, AMS, as soon as practical, but in all cases not later than the 45th business day after the date of the last day of the voting period. The Administrator, AMS, shall send her decision on a producer's appeal to the FSA county office where the producer was initially challenged. The FSA county office shall notify the challenged producer of the Administrator's, AMS, determination on his or her appeal. The Administrator's, AMS, determination on an appeal shall be final.

[65 FR 43508, July 13, 2000, as amended at 65 FR 62579, Oct. 19, 2000]

**§ 1230.632 Receiving ballots.**

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

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

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

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

**§ 1230.633 Canvassing ballots.**

(a) *Producers.* (1) Counting the ballots. Under the supervision of FSA CED, acting on behalf of the Administrator, AMS, the in-person registration and certification form envelopes (Form LS-72-2) and the absentee "Pork Referendum" envelopes (Form LS-73-1) containing the "Pork Ballot" envelopes for producer voters will be checked against the In-Person Voter Registration List (Form LS-75) and the

Absentee Voter Request List (Form LS-74), respectively, to determine properly registered voters. The ballots of producers voting in-person whose names are not on the In-Person Voter Registration List (Form LS-75), will be declared invalid. Likewise, the ballots of producers voting absentee whose names are not on the Absentee Voter Request List (Form LS-74) will be declared invalid. All ballots of challenged producer voters declared ineligible and invalid ballots will be kept separate from the other ballots and the envelopes containing these ballots will not be opened. The valid ballots will be counted on November 29, 2000, during regular business hours on the 46th business day after the last day of the in-person voting period. FSA county office employees will remove the sealed "Pork Ballot" envelopes (Form LS-72-1) from the registration form envelopes and "Pork Referendum" envelopes (absentee voting) envelopes of all eligible producer voters and all challenged producer voters determined to be eligible. After removing all "Pork Ballot" envelopes, FSA county employees will shuffle the sealed "Pork Ballot" envelopes or otherwise mix them up so that ballots cannot be matched with producers' names. After shuffling the "Pork Ballot" envelopes, FSA county employees will open them and count the ballots. The ballots will be counted as follows:

- (i) Number of eligible producers casting valid ballots;
- (ii) Number of producers favoring continuation of the Pork Checkoff Program;
- (iii) Number of producers favoring termination of the Pork Checkoff Program;
- (iv) Number of challenged producer ballots deemed ineligible;
- (v) Number of invalid ballots; and
- (vi) Number of spoiled ballots.

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

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

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

(b) *Importers.* (1) *Counting the ballots.* FSA headquarters personnel, acting on behalf of the Administrator, AMS, will check the registration forms and ballots for all importer voters against the Importer Ballot Request List (Form LS-77) to determine properly registered voters. The ballots of importers voting whose names are not recorded on the Importer Ballot Request List (Form LS-77), will be declared invalid. All ballots of importer voters declared invalid will be kept separate from the other ballots and the envelopes containing these ballots will not be opened. The valid ballots will be counted on November 29, 2000, during regular office hours on the 46th business day after the date of the last day of the in-person voting period. FSA headquarter office employees will remove the sealed "Pork Ballot" envelope (Form LS-72-1) from the "Pork Referendum" envelopes (Form LS-73-1) of all eligible importer voters. After removing all "Pork Ballot" envelopes, FSA headquarter employees will shuffle the sealed "Pork Ballot" envelopes or otherwise mix them up so that ballots cannot be matched with importers' names. After shuffling the "Pork Ballot" envelopes, FSA headquarters employees will open the envelopes and count the ballots. The ballots will be counted as follows:

- (i) Number of eligible importers casting valid ballots;
- (ii) Number of importers favoring continuation of the Pork Checkoff Program;
- (iii) Number of importers favoring termination of the Pork Checkoff Program;
- (iv) Number of importer ballots deemed invalid; and

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(v) Number of spoiled ballots.

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

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

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

**§ 1230.634 FSA county office report.**

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

**§ 1230.635 FSA State office report.**

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

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**§ 1230.636 Results of the referendum.**

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

(b) If the Secretary deems it necessary, the report of producer voting results in any State or county or the report of importer voting results shall be reexamined and checked by such persons as may be designated by the Secretary.

**§ 1230.637 Disposition of ballots and records.**

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

(b) *Importer ballots and records.* The FSA headquarters office in Washington, DC, will deliver the importers' U.S. Customs Service Form 7501s, the voter registration list, voted ballots, invalid ballots, spoiled ballots, and national summaries and records to the Marketing Programs Branch, Livestock and Seed Program, AMS, USDA,



Room 2627, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC. A Marketing Programs Branch employee will place the ballots and records in sealed containers marked with the identification of the referendum. Such ballots and records will be placed under lock in a safe place under the custody of the Marketing Programs Branch for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Administrator, AMS, by the end of such time, the records shall be destroyed.

**§ 1230.638 Instructions and forms.**

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

**§ 1230.639 Additional absentee voter challenge period.**

(a) *Absentee Voter Request List.* The Absentee Voter Request List (Form LS-74) will be available for inspection during an additional challenge period of five business days (October 23, 2000–October 27, 2000) at county FSA offices. The Absentee Voter Request List will be posted daily during regular office hours in a conspicuous public location at FSA county offices during the additional challenge period.

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

(c) *Who can be challenged.* Any person whose name is on the Absentee Voter Request List who was not subject to challenge during the September 19, 2000, through October 2, 2000, challenge period may be challenged. Those producers whose names were listed on the Absentee Voter Request List and who were subject to challenge because the

Absentee Voter Request List indicated they had returned their ballot are not subject to challenge during this additional 5-day period.

(d) *Notification of challenges.* The FSA County Committee or its representative, acting on behalf of the Administrator, AMS, will notify challenged producers as soon as practicable, but no later than the 2nd business day (October 31, 2000) after the last day of the additional challenge period. FSA county offices will notify all challenged persons that documentation such as sales documents, tax records, or other similar documents proving that the person owned and sold hogs or pigs during the representative period must be submitted or his or her vote will not be counted. The documentation must be provided to FSA county offices not later than November 7, 2000.

(e) *Determination of challenges.* The FSA County Committee or its representative, acting on behalf of the Administrator, AMS, will make a determination concerning the challenge based on documentation provided by the producer and will notify challenged producers as soon as practicable but no later than November 9, 2000.

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

(g) *Appeal.* A person declared to be ineligible to register and vote by the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, can file an appeal at the FSA county office not later than November 17, 2000. The FSA county office shall send a producer's appeal by facsimile to the Administrator, AMS, on the date it is filed at the FSA office or as soon as practical thereafter.

(h) *Determination of appeals.* An appeal will be determined by the Administrator, AMS, as soon as practical, but in all cases not later than the 45th business day (November 28, 2000) after the date of the last day of the voting period. The Administrator, AMS, shall

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

[65 FR 62579, Oct. 19, 2000]

**PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION**

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AUTHORITY: 7 U.S.C. 4601–4613; 7 U.S.C. 7401.