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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB-02-03]

Tobacco Inspection; Producer Referenda on Mandatory Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule and notice of referenda.

SUMMARY: This rule establishes procedures which the U.S. Department of Agriculture (USDA) will use in conducting a referenda among producers of each kind of tobacco that is eligible for price support to determine whether they favor mandatory grading of that kind of tobacco. Currently, tobacco that is not sold at auction is not subject to mandatory grading.

DATES: *Effective Date:* March 6, 2002.

Referenda Dates: The voting periods for the producer referenda will be March 11-15, 2002, for flue-cured tobacco, types 11, 12, 13, 14; and burley tobacco, type 31; and March 18-22, 2002, for Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; dark air-cured tobacco, types 35 and 36; and cigar filler and binder tobacco, types 42, 43, 53, 54, and 55.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), STOP 0280, 1400 Independence Avenue, SW, Washington, DC 20250-0280; telephone number (202) 205-0567.

SUPPLEMENTARY INFORMATION: Section 759 of the Agriculture, Rural Development, Food and Drug

Administration, and Related Agencies Appropriations Act for 2002 (Public Law 107-76) (Appropriations Act) requires USDA to conduct referenda among producers of each kind of tobacco that is eligible for price support under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*) to determine whether a majority of producers of a kind of tobacco voting in the referendum favor the mandatory grading of that kind of tobacco. The referenda should be conducted by March 31, 2002. If a majority of the producers voting in a referendum favor the mandatory grading of that kind, USDA is directed to ensure that the kind of tobacco is graded at the time of sale for the 2002 and subsequent marketing years. The USDA is also directed to establish user fees for any such inspections. To the maximum extent practicable, these fees would be established in the same manner as user fees for the grading of tobacco sold at auction authorized under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*). Regulations for tobacco inspection, including fees and charges, appear in Subpart B of 7 CFR part 29.

The USDA published in the **Federal Register** on February 1, 2002 (67 FR 4926) a proposed rule to establish procedures for referenda among producers of each kind of tobacco that is eligible for price support to determine whether they favor the mandatory grading of that kind of tobacco. The USDA requested comments on the proposal which expired on February 11, 2002. One comment was received from a major tobacco manufacturing company. This respondent stated that a copy of a sample ballot indicates that a grower only votes "yes" or "no" for mandatory grading and that the ballot does not notify the grower that user fees for grading which would be a consequence of the referendum passing. AMS does not believe that the ballot is the appropriate place for notices of this kind. Tobacco producers will, of course, be informed that if mandatory grading is adopted, user fees will be established for non-auction inspections and that these fees would be established in the same manner and be comparable to user fees for the grading of tobacco sold at auction. These fees are chargeable to the grower consigning the tobacco for sale.

The respondent also stated that only growers who would directly pay the

mandatory grading fees should be eligible to vote in the referenda. Such a limitation, however, is not permissible under the statute, which provides that the referenda shall be conducted among tobacco producers.

Provisions are included for the method of conducting the referendum, eligibility for voting, a one vote limitation, form and distribution of ballots, filing and tabulation of ballots, and confidentiality. As provided for in the Appropriations Act, separate referenda will be conducted among the producers of each kind of tobacco eligible for price support. These kinds are flue-cured tobacco, types 11, 12, 13, 14; Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; dark air-cured tobacco, types 35 and 36; burley tobacco, type 31; and cigar filler and binder tobacco, types 42, 43, 53, 54, and 55, as set forth at 7 CFR 1464.2.

Producers of each kind of tobacco will be eligible to vote in the referendum for that kind. Under USDA's price support program, periodic referenda are conducted among producers of specific commodities, including tobacco, to determine whether they favor the continuation of quotas. Voting eligibility is governed by 7 CFR 717.3. This final rule will follow those provisions as they apply to tobacco producers and will determine eligibility to vote in the same or similar way. In general, the persons eligible to vote in a referendum for a particular kind of tobacco would be the farmers engaged in the production of the crop of such tobacco harvested in the immediately preceding crop-year prior to the holding of the referendum. This includes any person who is entitled to share in a crop of the commodity, or the proceeds thereof because he or she shares in the risks of production of the crop as an owner, landlord, tenant, or sharecropper, but would not include a landlord whose return from the crop is fixed regardless of the amount of the crop produced.

This rule will administer the Appropriations Act requirements in accordance with USDA voting procedures with which the affected producers are familiar. The AMS Mandatory Grading Referenda program, producer eligibility, and procedural requirements will be governed by 7 CFR part 717, Holding of Referenda, and the

definitions contained in §§ 718.2 and 723.104 of that same chapter which govern USDA, Farm Service Agency (FSA) referenda for tobacco producer quotas. This avoids development of redundant requirements, besides, quota holders are familiar with these procedures. A copy of these regulations, a referendum ballot, and voting procedures are available for review in any USDA Service Center.

This final rule establishes procedures for conducting the producer referenda. The voting periods for the producer referenda will be March 11–15, 2002, for flue-cured tobacco, types 11, 12, 13, 14; and burley tobacco, type 31; and March 18–22, 2002, for Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; dark air-cured tobacco, types 35 and 36; and cigar filler and binder tobacco, types 42, 43, 53, 54, and 55.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** in order to fulfill the requirements of the statute that the referenda be conducted by March 31, 2002.

Executive Order 12866 and 12988

This rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The rule will not exempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

In conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), consideration has been given to the potential economic impact upon small business. There are approximately 450,000 tobacco producers who would be eligible to vote in the referenda. Pursuant to criteria established under the Regulatory Flexibility Act, most of the tobacco producers would be considered small entities. This rule will not substantially affect tobacco growers. Voting in the referendum is voluntary. As discussed in the following section on the Paperwork Reduction Act, the public reporting burden is minimal, an

estimated 5 minutes per response. Voting will be conducted by mail. The overall impact of this rule should be minimal on tobacco growers because this rule provides for referenda procedures only and relies on, to a great extent, existing procedures. Accordingly, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The information collections will be carried out using the referenda procedures of the Farm Service Agency and Form FSA MQ–5, Referendum Ballot. This rule will add no additional burden to that currently approved by OMB and assigned OMB Control Number 0560–0182 under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

Accordingly, 7 CFR part 29 is amended as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority citation for subpart B is revised to read as follows:

Authority: 7 U.S.C. 511m and 511r. Section 29.74a is also issued under sec. 759, Pub. L. 107–76, 115 Stat. 741 (7 U.S.C. 511s).

2. A new § 29.74a is added to read as follows:

§ 29.74a Producer referenda on mandatory grading.

(a)(1) *Method of conducting.* Referenda shall be conducted among producers who were engaged in the production of the following types of tobacco harvested in the immediately preceding crop year: flue-cured tobacco, types 11, 12, 13, 14; Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; dark air-cured tobacco, types 35 and 36; burley tobacco, type 31; and cigar filler and binder tobacco, types 42, 43, 53, 54, and 55. A referendum will be conducted for each kind of tobacco and the results will apply to each individual kind. A producer is eligible to vote in referenda for each kind of tobacco they produce.

(2) *Farmers engaged in the production of tobacco.* For purposes of the referenda, persons engaged in the production of tobacco includes any

person who is entitled to share in a crop of the tobacco or the proceeds thereof because he or she shares in the risks of production of the crop as an owner, landlord, tenant, or sharecropper (a landlord whose return from the crop is fixed regardless of the amount of the crop produced is excluded) on a farm on which such crop is planted in a workmanlike manner for harvest: Provided, That any failure to harvest the crop because of conditions beyond the control of such person shall not affect his or her status as a person engaged in the production of the crop. In addition, persons engaged in the production of tobacco also includes each person who it is determined would have had an interest as a producer in the crop on a farm for which a farm allotment under the quota program (7 CFR part 723, subpart B) for the crop was established and no acreage of the crop was planted but an acreage of the crop was regarded as planted for history acreage purposes under the applicable Farm Service Agency commodity regulations of the Department of Agriculture.

(3) *One vote limitation.* Each person eligible to vote in a particular referendum shall be entitled to only one vote in such referendum regardless of the number of farms in which such person is interested or the number of communities, counties, or States in which farms are located in which farms such person is interested: Provided, That:

(i) The individual members of a partnership shall each be entitled to one vote, but the partnership as an entity shall not be entitled to vote;

(ii) An individual eligible voter shall be entitled to one vote even though he or she is interested in an entity (including but not limited to a corporation) which entity is also eligible to vote;

(iii) A person shall also be entitled to vote in each instance of his or her capacity as a fiduciary (including but not limited to a guardian, administrator, executor or trustee) if in such fiduciary capacity he or she is eligible to vote but the person for whom he or she acts as a fiduciary shall not be eligible to vote.

(4) *Joint and family interest.* Where several persons, such as members of a family, have participated or will participate in the production of tobacco under the same lease or cropping agreement, only the person or persons who signed the lease or agreement, or agreed to an oral lease or agreement, shall be eligible to vote. Where two or more persons have produced or will produce tobacco as joint tenants, tenants in common, or owners of community property, each such person shall be

entitled to one vote if otherwise eligible. The eligibility of one spouse does not affect the eligibility of the other spouse.

(5) *Minors.* A minor shall be entitled to one vote if he or she is otherwise eligible and is 18 years of age or older when he or she votes.

(6) *Interpretation.* In the case of tobacco on a farm where no acreage of tobacco is actually planted but an acreage of the commodity is regarded as planted under applicable regulations of the Department of Agriculture, persons on the farm who it is determined would have had an interest in the commodity as a producer if an acreage of the commodity had been actually planted shall be eligible to vote in the referendum.

(b) *Referenda procedures.* See part 717 of chapter VII of this title for eligibility criteria and the procedures to be used in carrying out mandatory grading referenda. Where not inconsistent with this part, the definitions contained in parts 717, 718 and 723 of this title will govern administration of these referenda. A copy of the regulations in parts 717, 718, and 723 of this title, a referendum ballot, and voting procedures are available for review in any USDA Service Center.

Dated: February 28, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02-5228 Filed 3-1-02; 10:49 am]

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FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 907 and 908

[No. 2002-03]

RIN 3069-AB03

Rules of Practice and Procedure

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulations to implement the provisions of Title VI of the Gramm-Leach-Bliley Act, Pub. L. 106-102 (1999) and to establish rules of practice and procedure governing hearings on the record in certain administrative enforcement actions. The final rule is intended to provide Finance Board personnel, the Federal Home Loan Banks (Banks), the Office of Finance (OF) and the directors and executive officers of the Banks and OF, as well as any other interested parties, with sufficient notice and

guidance to fully utilize the procedures. The Finance Board is also making certain conforming amendments to its existing rules.

EFFECTIVE DATE: April 4, 2002.

FOR FURTHER INFORMATION CONTACT:

Charlotte A. Reid, Special Counsel, Office of General Counsel, 202/408-2510, reidc@fhfb.gov. Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Federal Home Loan Bank Act, *as amended*, 12 U.S.C. 1421-1449 (Act), the Federal Housing Finance Board (Finance Board),¹ regulates the twelve Federal Home Loan Banks (Banks).² Section 2A of the Act sets forth the duties of the Finance Board and provides that the primary duty of the Finance Board is to ensure that the Banks operate in a financially safe and sound manner. Consistent with that duty, the Act requires the Finance Board to supervise the Banks, ensure that they carry out their housing finance mission, and ensure that the Banks remain adequately capitalized and able to raise funds in the capital markets. 12 U.S.C. 1422a(a)(3)(A), (B). To ensure that the Banks operate in a safe and sound manner and comply with applicable laws and regulations, section 2B of the Act grants broad authority to the Finance Board to supervise the Banks and to promulgate and enforce such regulations and orders as are necessary to carry out the provisions of the Act. 12 U.S.C. 1422b(a)(1).³

In 1999, with the enactment of section 606 of Title VI of the Gramm-Leach-Bliley Act,⁴ the Finance Board received

¹ The Finance Board, an independent agency in the executive branch of the Federal government, was created by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. 101-73, § 702, 103 Stat. 412 (FIRREA). 12 U.S.C. 1422a(a)(2).

² The Banks, together with the Office of Finance, which is a joint office of the Banks as provided in 12 U.S.C. 1422b(2)(b), comprise the Federal Home Loan Bank System. 12 CFR 985.1. In accordance with section 985.4(a) of the Finance Board's regulations, the Finance Board has the same regulatory and enforcement authority over the Office of Finance and its officers, directors, employees and agents as the agency has with respect to each of the Banks and their respective officers, directors, employees and agents. See 12 CFR 985.4(a).

³ Additionally, section 20 of the Act authorizes the Finance Board to conduct examinations of the Banks (12 U.S.C. 1440) and section 6 of the Act requires the Finance Board to establish uniform capital requirements for the Banks and directs the Banks to submit conforming capital plans (12 U.S.C. 1426).

⁴ Gramm-Leach-Bliley Act, Pub. L. 106-102, 113 Stat. 1338 (Nov. 12, 1999) (GLB Act) (Title VI of the

substantially enhanced civil administrative enforcement powers under section 2B(a)(5) of the Act. See 12 U.S.C. 1422b(a)(5). Section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) establishes the cease and desist authority of the agency, and adopts certain enforcement powers set out in subtitle C of Title XIII of the Housing and Community Development Act of 1992, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act),⁵ as well as the authority to require affirmative corrective action under paragraphs (6) and (7) of section 8(b) of the Federal Deposit Insurance Act, *as amended* (codified at 12 U.S.C. 1818(b)(6) and (7)). Additionally, a new section 2B(a)(7) of the Act confers authority on the agency to act in its own name by and through its own attorneys to enforce any provision of the Act or any regulation promulgated under the Act.⁶

Section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) establishes the civil administrative enforcement authority of the Finance Board in four parts. First, section 2B(a)(5) of the Act expressly authorizes the Finance Board to issue and enforce cease and desist orders based upon three broad grounds: an unsafe or unsound practice in conducting the business of a Bank; any conduct that violates any provision of the Act or any law, order, rule, or regulation; or any conduct that violates any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by a Bank, or any written agreement entered into by a Bank with the Finance Board. See 12 U.S.C. 1422b(a)(5). Thus, among other things, section 2B(a)(5) of the Act authorizes the Finance Board to issue a notice of charges if it determines that a Bank or an executive officer or director of a Bank "is engaging or has engaged in, or the Finance Board has reasonable cause to believe that the Bank, executive officer, or director is about to engage in an unsafe or unsound practice." 12 U.S.C. 1422b(a)(5).

Second, section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) adopts the procedural provisions for initiating a cease and desist proceeding that govern

GLB Act is known as the Federal Home Loan Bank System Modernization Act of 1999).

⁵ The Subtitle C enforcement powers are codified at 12 U.S.C. 4631-4641.

⁶ Section 2B(a)(7) also authorizes the Finance Board to act in its own name and through its own attorneys in any action, suit, or proceeding to which the Finance Board is a party that involves the agency's regulation or supervision of any Bank. 12 U.S.C. 1422b(a)(7).