

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 80 Department of Agriculture and Industries

Chapter No.: 80-8-5

Chapter Title: Wheat, Corn, Grain Sorghum, and Oats Promotional Referendum

X New;        Amend;   x   Repeal;        Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?        NO

Is there a reasonable relationship between the State's police power and the protection of the public health, safety or welfare?        N/A

Is there another less restrictive method of regulation available that could adequately protect the public?        N/A

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?        NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?        N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?        YES

\*\*\*\*\*  
Does the proposed rule have any economic impact?        NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

\*\*\*\*\*  
Certification of Authorized Official  
I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer *[Handwritten Signature]*

Date: 12-12-2017

(DATE FILED)  
(STAMP)

APA-2

ALABAMA DEPARTMENT OF AGRICULTURE AND INDUSTRIES

NOTICE OF INTENDED ACTION

Agency Name: Alabama Department of Agriculture and Industries

Chapter NO. & Title: 80-8-5 Wheat, Corn, Grain Sorghum, and Oats Promotional Referendum

Intended Action: To Repeal and Replace with New Chapter

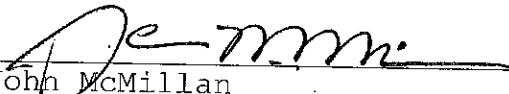
Substance of Proposed Action: To provide uniformity with check-off commodities so that the rules governing the referendum are clear and unchanging between commodities and conform entirely to the Code of Alabama.

Time, Place, Manner of Presenting Views: Views may be presented in writing to the contact person below or in person on Tuesday, February 13, 2018, at 10:00 a.m., in the Auditorium of the Richard Beard Building, 1445 Federal Drive, Montgomery, Alabama, 36117.

Final Date for Comment and Completion of Notice: February 13, 2018.

Contact Person at Agency: N. Gunter Guy Jr., Legal Counsel, Department of Agriculture and Industries, 1445 Federal Drive, Montgomery, Alabama 36107-1123, Telephone No. (334) 240-7117.

12-12-2017  
Date

  
John McMillan  
Commissioner of Agriculture  
and Industries

ALABAMA DEPARTMENT OF AGRICULTURE AND INDUSTRIES  
MARKETING  
ADMINISTRATIVE CODE

CHAPTER 80-8-5  
WHEAT, CORN, GRAIN SORGHUM,  
AND OATS PROMOTIONAL REFERENDUM "Repealed"

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80-8-5-.01 Purpose And Definitions.

(1) The purpose of this Chapter is to set up procedures and rules governing the referendum conducted under the provisions of Code of Ala. 1975, §§2-8-230 through 2-8-252, for feed grains promotional programs.

(2) For purposes of this Chapter the words **feed grains** shall mean wheat, corn, grain sorghum and oats, both singular and collectively.

**Author:** Charles H. Barnes

**Statutory Authority:** Code of Ala. 1975, §2-8-249.

**History:** Filed August 22, 1986.

80-8-5-.02 Referendum To Be Held. A referendum shall be held by the Association certified by the Board of Agriculture and Industries, under the provisions of Code of Ala. 1975, §2-8-234, on a statewide basis at which time Alabama producers of wheat, corn, grain sorghum, and oats may vote, upon the question of whether they favor an assessment of \$.01 per net bushel after deductions for foreign matter on any feed grains sold by said producers for a five year period for the purpose of financing a promotional program for grains as authorized by Code of Ala.

1975, §2-8-246.

**Authors:** Robert J. Russell, Reginald L. Sorrells, Patrick B. Moody

**Statutory Authority:** Code of Ala. 1975, §2-8-249.

**History:** Filed August 22, 1986. **Amended:** August 27, 1991.

**Amended:** Filed August 15, 1996; effective September 19, 1996.

**Amended:** Filed August 15, 2001; effective September 19, 2001.

**Amended:** Filed August 18, 2006; effective September 22, 2006.

**Amended:** Filed May 12, 2011; effective June 16, 2011. **Amended:** Filed November 8, 2016; effective December 23, 2016.

**80-8-5-.03**      **Notice To Be Given.** Notice of said referendum by publication or otherwise shall be given by the certified associations as provided under Code of Ala. 1975, §2-8-236.

**Author:** Charles H. Barnes

**Statutory Authority:** Code of Ala. 1975, §2-8-249.

**History:** Filed August 22, 1986.

**80-8-5-.04**      **Polling Places And Time Of Operation.**

(1)            The referendum shall be held by providing voting facilities at the county seat in each of the 67 counties of the

State of Alabama. In those counties where there is a large number of feed grains producers and if for other reasons it may not be convenient for feed grains producers to vote at the county seat, then additional voting facilities may be provided in such counties at convenient locations such as city hall, community centers, local offices of the county Farmers Federation or other locations to be selected by the certified association. The exact location of the voting places in each county shall be given publicity in order that all feed grains producers will have an opportunity to vote. The certified association shall furnish all necessary ballots and county election supplies and bear all expenses necessary and incident to holding the referendum.

(2)            The polls shall be open for voting from 8:00 a.m. to 4:00 p.m. on the date of the referendum.

**Author:** Charles H. Barnes

**Statutory Authority:** Code of Ala. 1975, §2-8-249.

**History:** Filed August 22, 1986. **Amended:** Filed August 27, 1991. **Amended:** Filed November 8, 2016; effective December 23, 2016.

Procedures For Polling And Handling Results Of The

(1) Each polling place shall have not less than two individuals who shall serve as poll holders to be in charge of and supervise the voting. Such polling places shall have a voter's register and those who are eligible to vote shall sign his or her name upon such register and enter thereon his or her address together with the number of acres of feed grains harvested in the year before the referendum or planted in the year of the referendum.

(2) Producers of feed grains shall be furnished with a printed ballot for voting by secret ballot and after the vote is cast, such ballot shall be folded, deposited and kept in a ballot box or other similar container suitable to serve as a ballot box.

(3) As soon as the last voter has voted and the polls close, the poll holders shall immediately open the ballot boxes, count and tabulate the results of the voting and certify the results thereof to the Director of the certified association. Any interested individual who cares to be present when the ballots are counted or tabulated may be present and observe such vote counting and tabulation of results.

(4) Upon the conclusion of paragraph No. (3) above, a poll holder shall place the ballots in a sealed container. The poll holder will deliver or forward all county ballots in the sealed containers, after tabulation of voting results, to the Director of the Certified Association. The State Certified Association shall upon receipt of certified results from each county, tabulate, publicly declare and announce the results of the statewide referendum within a period of ten (10) days following receipt of the results from each county in Alabama.

(5) A certified copy of the results of the statewide referendum shall be forwarded to the Commissioner of Agriculture and Industries.

**Authors:** Robert J. Russell, Reginald Sorrells, Patrick B. Moody

**Statutory Authority:** Code of Ala. 1975, §2-8-249.

**History:** Filed August 22, 1986. **Amended:** Filed August 27, 1991. **Amended:** Filed August 15, 1996; effective September 19, 1996. **Amended:** Filed August 15, 2001; effective September 19, 2001. **Amended:** Filed August 18, 2006; effective September 22, 2006. **Amended:** Filed August 18, 2006; effective

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**Chapter 80-8-5**

**Agriculture and Industries**

**80-8-5-.06**

**Persons Entitled To Vote.**

(1) All persons subject to the deduction of \$.01 per bushel from the sale price of their feed grains are entitled to vote in the referendum upon the question of whether they favor an assessment of one cent (\$.01) per bushel to be deducted from the sale price of their feed grains for the next five years, provided such persons produced feed grains in the year before the referendum or planted feed grains for harvest in the year of the referendum.

(2) Each feed grains producer shall have one vote where the production operation is conducted by an individual, partnership, corporation, estate or other legal entity. If the feed grains production operation is conducted as a family enterprise and different members of the family produce feed grains which are sold separately, each such producer is entitled to one vote. If the feed grains production operation is conducted by a partnership, corporation, estate or other legal entity, then one individual shall be designated to vote for such a production operation. Where feed grains are produced on lands of another, on a share crop or share tenant basis and such share cropper receives feed grains which he sells, then such share cropper is entitled to vote in the referendum.

(3) Each eligible voter shall vote in person at an established polling place. Proxy voting or voting by mail shall not be permitted.

**Authors:** Robert J. Russell, Reginald L. Sorrells, Patrick B. Moody

**Statutory Authority:** Code of Ala. 1975, §2-8-249.

**History:** Filed August 23, 1986. **Amended:** Filed August 27, 1991. **Amended:** Filed August 15, 1996; effective September 19, 1996. **Amended:** Filed August 15, 2001; effective September 19, 2001. **Amended:** Filed August 18, 2006; effective September 22, 2006. **Amended:** Filed May 12, 2011; effective June 16, 2011. **Amended:** Filed November 8, 2016; effective December 23, 2016.

80-8-5-.07      Bond Required For Certified Association. Under the provisions of Code of Ala. 1975, §2-8-245, the treasurer of the certified association shall be bonded in an amount of not less than one hundred thousand dollars (\$100,000). At the end of a complete year of assessment collections the above bond amount requirement will be adjusted to adequately reflect as required under the law, the amount of assessment forwarded to the certified association.

**Author:** Charles H. Barnes

**Statutory Authority:** Code of Ala. 1975, §2-8-249.

**History:** Filed August 22, 1986.

ALABAMA DEPARTMENT OF AGRICULTURE AND INDUSTRIES  
ADMINISTRATIVE CODE

MARKETING

CHAPTER 80-8-5  
WHEAT, CORN, GRAIN SORGHUM,  
AND OATS PROMOTIONAL REFERENDUM "New Chapter"

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80-8-5-.01 Purpose

The purpose of this Chapter is to establish the rules and procedures to govern the conduct of a referendum under the terms of Code of Alabama. This referendum will allow grain producers to vote an assessment against themselves which will be used for promotion of the grain industry in Alabama.

Author: N. Gunter Guy, Jr.

Statutory Authority: Code of Ala. 1975, §2-8-230

History: Filed:

80-8-5-.02 Referendum to be Held

Pursuant to Code of Ala. 1975, § 2-8-235 the Association certified by the State Board of Agriculture and Industries shall hold a referendum amongst producers of grain. At that time Alabama grain producers will vote and determine if they favor paying for a period of 5 years from the date of the referendum, an assessment in an amount not to exceed the limit set forth in the Code of Ala., 1975, §2-8-239.

Author: N. Gunter Guy, Jr.

Statutory Authority: Code of Ala. 1975, §2-8-232

History: Filed:

80-8-5-.03 Conduct of Referendum; Payment of Expenses



(1) The Association certified by the State Board of Agriculture and Industries shall have the responsibility to arrange, manage and conduct any referendums.

(2) All expenses and costs necessary to conduct any referendums shall be borne by the Association certified by the State Board of Agriculture and Industries.

Author: N. Gunter Guy, Jr.

Statutory Authority: Code of Ala. 1975, §2-8-237

History: Filed:

#### 80-8-5-.04 Notice Requirements

Not less than 30 days before any referendum is held, the Association certified by the State Board of Agriculture and Industries shall give notice of such referendum by publishing same in an established farm publication and by mailing a written notice to each county extension coordinator in the area covered by the referendum. The notice shall include, at minimum, the date of the referendum, the hours that the polls will be open, the addresses of polling places, the rules for voting in the referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected, and the general purpose for which the assessment is collected.

Author: N. Gunter Guy, Jr.

Statutory Authority: Code of Ala. 1975, §2-8-236

History: Filed:

#### 80-8-5-.05 Polling Places and Time of Operation

(1) Voting facilities shall be provided in counties in which grains are produced. Additional facilities may be provided should the Association certified by the State Board of Agriculture and Industries find same advisable.

(2) Polls shall be open from 8:00 a.m. to 4:00 p.m. on the date of the referendum.

Author: N. Gunter Guy, Jr.

Statutory Authority: Code of Ala. 1975, §§2-8-236, 2-8-249

History: Filed:

#### 80-8-5-.06 Persons Eligible to Vote; Voting Requirement

(1) All producers of wheat, corn, grain sorghum, and oats who shall be subject to an assessment shall be eligible to vote in the referendum. If there is any question of eligibility, the Association certified by the State Board

- of Agriculture and Industries is authorized to request any additional information permitted by law.
- (2) Each producer shall have one vote.

Author: N. Gunter Guy, Jr.

Statutory Authority: Code of Ala. 1975, §2-8-238

History: Filed:

**80-8-5-.07 Polling Procedures; Certifying of Results**

- (1) There shall be two persons at each polling place who shall serve as poll holders. Such poll holders shall be in charge of and supervise the voting.
- (2) Each polling place shall have a voting register in the form of an affidavit. Prior to casting his or her vote, each person who is entitled to vote in the referendum shall sign his or her name to the register. Also, each voter shall write in the register his or her address and the total number of acres they had in production of grain in the last year.
- (3) Each producer shall be provided a ballot. The producer will mark whether he approves or disapproves the promotional program.
- (4) Votes shall be cast by secret ballot. Each marked ballot shall be deposited in a ballot box or other designated container where it will be kept until such time as it is counted.
- (5) As soon as the polls close and the last vote is cast, the poll holders shall open the ballot boxes or other containers, count each ballot and tabulate the results of the count. They will then immediately report the results to the Association certified by the State Board of Agriculture and Industries. Following the referendum and within 10 days thereafter, the Association certified by the State Board of Agriculture and Industries shall publicly declare and announce the results.

Author: N. Gunter Guy, Jr.

Statutory Authority: Code of Ala. 1975, §2-8-239

History: Filed: