

the wheat was loaded onto a conveyance for delivery to the foreign country or instrumentality.

(d) Copies of the documents required in paragraphs (a), (b), and (c) of this section shall be kept on file at the end-user's or exporter's headquarters office or other location designated by the end user or exporter for the period specified in § 782.25.

**§ 782.22 Subsequent buyer records and reports.**

(a) The subsequent buyer shall retain a copy of each form FSA-751, Wheat Consumption and Resale Report, that is filed with KCCO in accordance with § 782.15(a)(1).

(b) The subsequent buyer shall retain a copy of each form FSA-750, End-Use Certificate for Wheat, provided to the subsequent buyer in accordance with § 782.17(b).

(c) The subsequent buyer shall maintain records to verify that the wheat specified on the end-use certificate was identity preserved during the time that the subsequent buyer maintained control of the wheat, or until the wheat was loaded onto a conveyance for direct delivery to an end user.

(d) Copies of the documents and records required in paragraphs (a) through (c) of this section shall be kept on file at the subsequent buyer's headquarters office or other location designated by the subsequent buyer for the period specified in § 782.25.

**§ 782.23 Failure to file end-use certificates or consumption and resale reports.**

Failure by importers, end users, exporters, and subsequent buyers to file form FSA-750, End-Use Certificate for Wheat, and form FSA-751, Wheat Consumption and Resale Report, as applicable, and retain or maintain related copies and records shall constitute noncompliance for the purposes of § 782.19.

**§ 782.24 Recordkeeping and examination of records.**

(a) *Examination.* For the purpose of verifying compliance with the requirements of this part, each importer, end-user, exporter, and subsequent buyer shall make available at one place at all

reasonable times for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to the importation of the Canadian-produced wheat that is within the control of such entity.

(b) *Orderly retention of records.* To facilitate examination and verification of the records and reports required by this part, copies of form FSA-750, End-Use Certificate for Wheat, and form FSA-751, Wheat Consumption and Resale Report, shall be filed in an orderly manner, and must be made available for inspection by representatives of USDA.

**§ 782.25 Length of time records are to be kept.**

The records required to be kept under this part shall be retained for 3 years following the filing date of the applicable record. Records shall be kept for such longer period of time as may be requested in writing by USDA representatives.

**PART 784—2004 EWE LAMB REPLACEMENT AND RETENTION PAYMENT PROGRAM**

Sec.

784.1 Applicability.

784.2 Administration.

784.3 Definitions.

784.4 Time and method of application.

784.5 Payment eligibility.

784.6 Rate of payment and limitations on funding.

784.7 Availability of funds.

784.8 Appeals.

784.9 Misrepresentation and scheme or device.

784.10 Estates, trusts, and minors.

784.11 Death, incompetence, or disappearance.

784.12 Maintaining records.

784.13 Refunds; joint and several liability.

784.14 Offsets and withholdings.

784.15 Assignments.

784.16 Termination of program.

AUTHORITY: Clause (3) of section 32 of the Act of August 24, 1935, as amended; 7 U.S.C. 612c.

SOURCE: 69 FR 76837, Dec. 23, 2004, unless otherwise noted.

## § 784.1

## 7 CFR Ch. VII (1–1–14 Edition)

### § 784.1 Applicability.

(a) Subject to the availability of funds, this part establishes terms and conditions under which the 2004 Ewe Lamb Replacement and Retention Payment Program will be administered.

(b) Unless otherwise determined by the Farm Service Agency (FSA) in accordance with the provisions of this part, the amount that may be expended under this part for program payments shall not exceed \$18 million. Claims that exceed that amount will be prorated in accordance with § 784.7.

(c) To be eligible for payments, producers must comply with all provisions of this part and with any other conditions imposed by FSA.

### § 784.2 Administration.

(a) This part shall be administered by FSA under the general direction and supervision of the Deputy Administrator for Farm Programs, FSA. The program shall be carried out in the field by FSA State and county committees (State and county committees) in accordance with their assigned duties and the regulations of this part.

(b) The Deputy Administrator for Farm Programs, FSA, or a designee, may reverse or modify a determination made by a State or county committee.

(c) The Deputy Administrator for Farm Programs, FSA, may waive or modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not adversely affect the operation of the program.

(d) The program described under this part is a one-time program to be administered with respect to eligibility and qualifying factors occurring during or related to the base period of August 1, 2003 through July 31, 2004, as specified in this part.

### § 784.3 Definitions.

The definitions in this section shall apply to the 2004 Ewe Lamb Replacement and Retention Payment Program and this part.

*Agricultural Marketing Service or AMS* means the Agricultural Marketing Service of the Department.

*Application* means the Ewe Lamb Replacement and Retention Payment Program Application.

*Application period* means the date established by the Deputy Administrator for producers to apply for program benefits. Unless otherwise announced, that period will end January 13, 2005.

*Base period* means the period from August 1, 2003, through July 31, 2004, during and after which ewe lambs must meet all qualifying eligibility criteria.

*Ewe lamb* means a female lamb no more than 18 months of age that has not produced an offspring.

*Farm Service Agency or FSA* means the Farm Service Agency of the Department.

*Foot rot* means an infectious, contagious disease of sheep that causes severe lameness and economic loss from decreased flock production.

*Lambing cycle* means the period of time from birth to weaning.

*Parrot mouth* means a genetic defect resulting in the failure of the incisor teeth to meet the dental pad correctly.

*Person* means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen or citizens of, or legal resident alien or aliens in the United States.

*Sheep and lamb operation* means any self-contained, separate enterprise operated as an independent unit exclusively within the United States in which a person or group of persons raise sheep and/or lambs.

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

### § 784.4 Time and method of application.

(a) A request for benefits under this part must be submitted on the Ewe Lamb Replacement and Retention Program Application. The application form may be obtained in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the form at <http://www.usda.gov/dafp/psd/>.

(b) The form may be obtained from and must be submitted to the FSA county office serving the county where

the sheep and lamb operation is located. The completed form must be received by the FSA county office by the date established by FSA. Applications not received by that date will be disapproved and returned as not having been timely filed and the sheep and lamb operation filing the application will not be eligible for benefits under this program.

(c) The sheep and lamb operation requesting benefits under this part must certify to the accuracy of the information provided in their application for benefits. All information provided is subject to verification and spot checks by FSA. Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Data furnished by the applicant will be used to determine eligibility for program benefits. Providing a false certification will lead to ineligibility for payments and may be subject to additional civil and criminal sanctions.

(d) The sheep and lamb operation requesting benefits under this part must maintain accurate records that document that they meet all eligibility requirements specified herein, as may be requested by FSA. Acceptable forms of supporting documentation include, but are not limited to: Sales receipts, farm management records, veterinarian certifications, scrapie program forms and identification numbers, as well as, other types of documents that prove the eligibility of the qualifying ewe lambs and the sheep and lamb operation. The supporting documentation provided must, at a minimum, include: date of lamb purchase or date of birth, date of lamb death (if applicable), lamb identification and control information, number of ewe lambs purchased or retained, and scrapie program identification numbers.

#### § 784.5 Payment eligibility.

(a) Payments can be made, as agreed to by FSA and subject to the availability of funds, for eligible ewe lambs considered by FSA, as determined by FSA only, to have been acquired or held during the base period by eligible sheep and lamb operations for breeding purposes. Payments may be made for

eligible ewe lambs held continuously by the operation, through the end of the compliance period, from the time of the first possession of the ewe lamb in the base period. The payment rate cannot exceed the rate provided for in § 784.6 and may be prorated pursuant to § 784.7. For purposes of this section, the "base period" is the period from August 1, 2003, through July 31, 2004. A purchase in the base period without possession in the base period will not be considered an acquisition in the base period for purposes of this section unless otherwise allowed by FSA.

(b) For the ewe lamb to be eligible, a sheep and lamb operation must certify that the ewe lamb:

(1) During at least part of the base period was a ewe lamb which was both, at the same time, not older than 18 months of age and had not produced an offspring; and

(2) At the time of certification, does not possess any of the following characteristics:

- (i) Parrot mouth; or
- (ii) Foot rot.

(c) The sheep and lamb operation must certify and agree to:

(1) Maintain the qualifying ewe lambs in the herd for at least one complete, normal offspring lambing cycle, the end of which shall constitute the end of the compliance period for the purposes of paragraph (a) of this section, and actually maintain the lambs for that period in accord with that certification. The "offspring" lambing cycle refers to the time in which the qualifying ewe lamb's own offspring would be weaned, in a normal course, from that qualifying ewe if the ewe were to have offspring, irrespective of whether the ewe actually produces offspring.

(2) Upon request by an AMS agent or FSA representative, allow the AMS agent or FSA Representative to verify that the ewe lambs meet qualifying characteristics. Spot checks will be conducted by FSA within 30 days of the end of the sign-up period. Any animal showing evidence of parrot mouth, foot rot, or scrapie in such spot checks will be considered to have had those conditions at the time of certification. Other spot checks may be conducted as needed.

## § 784.6

(3) Maintain documentation of any death loss of qualifying ewe lambs.

(4) Agree to refund any payments made with respect to any ewe lamb or offspring that has died before completing the full program requirements where said deaths for the operation exceed 10 percent.

(5) Be in compliance with all requirements relating to scrapie, as described in 9 CFR parts 54 and 79.

(d) To be eligible for any payments addressed under this section, a sheep and lamb operation must be engaged in the business of producing and marketing agricultural products at the time of filing the application.

(e) In addition, to be eligible for payment, a sheep and lamb operation must submit a timely application during the application period for benefits and comply with all other terms and conditions of this part or that are contained in the application for such benefits, and such other conditions as may be imposed by FSA.

(f) Proof that each lamb was held during and through the end of the base period as required by paragraph (a) of this section, as must be determined individually for each lamb, shall be provided in such manner, and with such access to the operation and the documents and information related to the operation, as FSA may request.

### § 784.6 Rate of payment and limitations on funding.

(a) Subject to the availability of funds and to the proration provisions of § 784.7, payments for qualifying operations shall be \$18 for each qualifying ewe lamb retained or purchased for breeding purposes.

### § 784.7 Availability of funds.

Total payments under this part, unless otherwise determined by the FSA, cannot exceed \$18 million. In the event that approval of all eligible applications would result in expenditures in excess of the amount available, FSA shall prorate the available funds by a national factor to reduce the expected payments to be made to the amount available. The payment shall be made based on the national factored rate as determined by FSA. FSA shall prorate the payments in such manner as it, in

## 7 CFR Ch. VII (1–14 Edition)

its sole discretion, finds appropriate and reasonable.

### § 784.8 Appeals.

The appeal regulations set forth at parts 11 and 780 of this title apply to determinations made pursuant to this part.

### § 784.9 Misrepresentation and scheme or device.

(a) A sheep and lamb operation shall be ineligible to receive assistance under this program if it is determined by the State committee or the county committee to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded with interest together with such other sums as may become due. Any sheep and lamb operation or person engaged in acts prohibited by this section and any sheep and lamb operation or person receiving payment under this part shall be jointly and severally liable with other persons or operations involved in such claim for benefits for any refund due under this section and for related charges. The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies that may apply.

### § 784.10 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for assistance under this part must, also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

## Farm Service Agency, USDA

## § 784.16

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

### § 784.11 Death, incompetence, or disappearance.

In the case of death, incompetence, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by FSA.

### § 784.12 Maintaining records.

Persons making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein. Such records and accounts must be retained for 3 years after the date of payment to the sheep and lamb operations under this program. Destruction of the records after such date shall be at the risk of the party undertaking the destruction.

### § 784.13 Refunds; joint and several liability.

(a) In the event there is an inaccurate certification or a failure to comply with any term, requirement, or condition for payment arising under the application, or this part, and if any refund of a payment to FSA shall otherwise become due in connection with the application, or this part, all related payments made under this part to any sheep and lamb operation shall be refunded to FSA together with interest as determined in accordance with paragraph (c) of this section and late payment charges as provided in part 1403 of this title.

(b) All persons signing a sheep and lamb operation's application for payment as having an interest in the operation shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation.

(c) Interest shall be charged on refunds required of any person under this part if FSA determines that payments or other assistance was provided to a

person who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the Commodity Credit Corporation for funds, from the date FSA made such benefits available to the date of repayment or the date interest increases as determined in accordance with applicable regulations. FSA may waive the accrual of interest if FSA determines that the cause of the erroneous determination was not due to any action of the person.

(d) Interest determined in accordance with paragraph (c) of this section may be waived at the discretion of FSA alone for refunds resulting from those violations determined by FSA to have been beyond the control of the person committing the violation.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in 7 CFR part 792.

(f) Any excess payments made by FSA with respect to any application under this part must be refunded.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

### § 784.14 Offsets and withholdings.

FSA may offset or withhold any amounts due FSA under this subpart in accordance with the provisions of 7 CFR part 792, or successor regulations, as designated by the Department.

### § 784.15 Assignments.

Any person who may be entitled to a payment may assign his rights to such payment in accordance with 7 CFR part 1404, or successor regulations, as designated by the Department.

### § 784.16 Termination of program.

This program will be terminated after payment has been made to those applications certified as eligible pursuant to the application period established in § 784.4.

**PART 785—CERTIFIED STATE  
MEDIATION PROGRAM**

## Sec.

- 785.1 General.
- 785.2 Definitions.
- 785.3 Annual certification of State mediation programs.
- 785.4 Grants to certified State mediation programs.
- 785.5 Fees for mediation services.
- 785.6 Deadlines and address.
- 785.7 Distribution of Federal grant funds.
- 785.8 Reports by qualifying States receiving mediation grant funds.
- 785.9 Access to program records.
- 785.10 Penalties for non-compliance.
- 785.11 Reconsideration by the Administrator.
- 785.12 Nondiscrimination.
- 785.13 OMB control number.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; and 7 U.S.C. 5101-5104.

SOURCE: 67 FR 57315, Sept. 10, 2002, unless otherwise noted.

**§ 785.1 General.**

(a) States meeting conditions specified in this part may have their mediation programs certified by the Farm Service Agency (FSA) and receive Federal grant funds for the operation and administration of agricultural mediation programs.

(b) USDA agencies participate in mediations pursuant to agency rules governing their informal appeals processes. Where mediation of an agency decision by a certified State mediation program is available to participants in an agency program as part of the agency's informal appeal process, the agency will offer a participant receiving notice of an agency decision the opportunity to mediate the decision under the State's certified mediation program, in accordance with the agency's informal appeals regulations.

(c) USDA agencies making mediation available as part of the agency informal appeals process may execute memoranda of understanding with a certified mediation program concerning procedures and policies for mediations during agency informal appeals that are not inconsistent with this part or other applicable regulations. Each such memorandum of understanding will be deemed part of the grant agreement governing the oper-

ation and administration of a State certified mediation program receiving Federal grant funds under this part.

(d) A mediator in a program certified under this part has no authority to make decisions that are binding on parties to a dispute.

(e) No person may be compelled to participate in mediation provided through a mediation program certified under this part. This provision shall not affect a State law requiring mediation before foreclosure on agricultural land or property.

**§ 785.2 Definitions.**

*Administrator* means the Administrator, FSA, or authorized designee.

*Certified State mediation program* means a program providing mediation services that has been certified in accordance with § 785.3.

*Confidential mediation* means a mediation process in which the mediator will not disclose to any person oral or written communications provided to the mediator in confidence, except as allowed by 5 U.S.C. 574 or § 785.9.

*Covered persons* means producers, their creditors (as applicable), and other persons directly affected by actions of the USDA involving one or more of the following issues:

- (1) Wetlands determinations;
- (2) Compliance with farm programs, including conservation programs;
- (3) Agricultural loans (regardless of whether the loans are made or guaranteed by the USDA or are made by a third party);
- (4) Rural water loan programs;
- (5) Grazing on National Forest System lands;
- (6) Pesticides; or
- (7) Such other issues as the Secretary may consider appropriate.

*Fiscal year* means the period of time beginning October 1 of one year and ending September 30 of the next year and designated by the year in which it ends.

*FSA* means the Farm Service Agency of the U.S. Department of Agriculture, or a successor agency.

*Mediation services* means all activities relating to the intake and scheduling