

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 1280**

[No. LS-01-12]

RIN 0581-AC06

**Lamb Promotion, Research, and Information Order****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

**SUMMARY:** This rule establishes a Lamb Promotion, Research, and Information Order (Order) under the Commodity Promotion, Research, and Information Act of 1996. The Order provides for an industry-funded promotion, research, and information program for lamb and lamb products including pelts but excluding wool and wool products. The program applies to all sales of sheep and lambs. Under the Order, lamb producers, seedstock producers, feeders, and exporters will pay an assessment of one-half cent (\$.005) per pound when live lambs are sold. The first handler, primarily packers, will pay an additional assessment of 30 cents per head of lambs purchased by the first handler for slaughter. The first handler or exporter will remit the total amount of assessment due to the Lamb Promotion, Research, and Information Board (Board).

**EFFECTIVE DATE:** April 12, 2002.

**FOR FURTHER INFORMATION CONTACT:** Marlene Betts, Acting Chief; Marketing Programs Branch, Room 2627-S; Livestock and Seed Program, AMS, USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250-0251; telephone (202) 720-1115, fax (202) 720-1125, or e-mail at [marlene.betts@usda.gov](mailto:marlene.betts@usda.gov).

**SUPPLEMENTARY INFORMATION:** This Order is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996 (Act), 7 U.S.C. 7411-7425; Public Law 104-127, enacted April 4, 1996, hereinafter referred to as the Act. Prior documents in this proceeding:

Invitation to submit proposals was published November 23, 1999 [64 FR 65665].

Invitation to submit proposals: Reopening and extension of time to submit proposals was published January 12, 2000 [65 FR 1825].

Proposed Rule—Lamb Promotion, Research, and Information Order was published September 21, 2001 [66 FR 48764].

**Executive Orders 12988 and 12866**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under § 519 of the Act, a person subject to the Order may file a petition with the Department of Agriculture (Department) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within 2 years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or carries on business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the final ruling.

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 (OMB).

**Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency examined the impact of this rule on small entities and has prepared a final regulatory flexibility analysis. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, Government-supervised, generic commodity promotion programs.

This Order is intended to develop and finance an effective and coordinated

program of promotion, research, and information to maintain and expand the markets for lamb and lamb products. In response to invitations to submit proposals published in the **Federal Register** November 23, 1999 [64 FR 65665], and January 12, 2000 [65 FR 1825], a proposed Order developed by the Lamb Industry Checkoff Exploration Team was submitted by the American Sheep Industry Association (Proponent I). Proponent I proposed a program assessing lamb producers, feeders, first handlers, and seedstock producers. In addition, two partial proposals were submitted by the National Lamb Feeders Association (Proponent II) and the United States Seedstock Alliance (Proponent III). Proponent II proposed definitions for feeder, producer, and seedstock producer and that the Department should be authorized to appoint only one feeder representative who annually feeds 5,000 or more head of lambs and to appoint two feeders who annually feed less than 5,000 head of lamb. Proponent III proposed that the Order be approved in a referendum by a majority of those voting.

While the Order imposes certain recordkeeping and reporting requirements on persons subject to the Order, the information required under the Order can be compiled from records currently maintained. First handlers and exporters will collect and remit the assessments on lamb and lamb products to the Board. Their responsibilities will include accurate recordkeeping and accounting of the number of lambs purchased, the names of the producers, seedstock producers, and feeders, and the purchase date. The required reporting forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such records and reports shall be retained for at least 2 years beyond the fiscal year of their applicability. These requirements are already being conducted as a normal business practice. In addition, a person who is a market agency; i.e., commission merchant, auction market, or livestock market in the business of receiving lambs for sale on commission for or on behalf of a producer, seedstock producer, or feeder will be required to collect an assessment and pass the collected assessments on to the subsequent purchaser. There will be a minimal burden on persons who are market agencies. It is not anticipated that they will be required to submit records of their transactions involving lamb purchases and the required assessment collection to the Board.

Information on such transactions can be obtained through an audit of the market agencies' records. Such records are already being maintained as a normal business practice. This will include such records or documents that evidence payment of an assessment pursuant to the requirements in § 1280.225(b). In addition, market agencies must certify as required by regulations prescribed by the Department that the provisions of § 1280.217(b) have been met.

First handlers of lambs who seek nomination to serve on the Board will be required to complete a nomination form that will be submitted to the Department.

The added burden to first handlers and exporters for a lamb promotion, research, and information program is therefore minimal.

There is also a minimal burden on producers, seedstock producers, and feeders. The burden relates to those producers, seedstock producers, and feeders who will seek nomination to serve on the Board, request a refund of assessments paid, and vote in referenda. In addition, the Order will require producers, seedstock producers, and feeders to provide information to the Board or the Department when requested and to keep records to qualify for a refund. However, it is not anticipated that producers, seedstock producers, and feeders will be required to regularly submit assessment forms to the Board. In some instances, as part of the Board's compliance operation, the information will be obtained through an audit of producer's, seedstock producer's, or feeder's records to confirm information provided by a first handler or if a first handler did not file the required reports. When seeking nomination to serve on the Board, producers, seedstock producers, feeders, and first handlers will be required to complete one form that will be submitted to the Department by a certified organization able to make nominations.

The estimated annual cost of providing the required information to the Board by an estimated 70,804 respondents (51,800 producers, 15,000 seedstock producers, 3,318 market agencies, 571 first handlers, 100 feeders, and 15 exporters) is \$989,840 or \$13.98 per respondent.

Once the program is implemented, the Department will oversee program operations and conduct a referendum not later than 3 years after assessments first begin under this part. In accordance with the Act, subsequent referenda will be conducted (1) not later than 7 years after assessments first begin to

determine whether lamb producers, seedstock producers, feeders, first handlers, and exporters support continuation of the program, (2) at the request of the Board established under the Order, or (3) at the request of 10 percent or more of the number of persons eligible to vote in referenda. Additionally, the Department may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by those eligible to vote in the referendum.

There are approximately 51,800 producers, 15,000 seedstock producers, 100 feeders, 571 first handlers, and 15 exporters of lamb who will be subject to the program. Most of the lamb producers, seedstock producers, feeders, and exporters would be classified as small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.201). Most first handlers would not be classified as small businesses. SBA defines small agricultural handlers as those whose annual receipts are less than \$5 million and small agricultural producers are defined as those having annual receipts of less than \$750,000.

To compete against rising foreign imports and flat domestic demand, the domestic lamb industry proposed a promotion and research checkoff program to improve production efficiency and promote consumption.

The domestic lamb industry is composed of two groups: lamb producers and lamb packers and processors. Domestic lamb producers can be further divided into three groups: (1) Breeders of purebred sheep and lambs used for breeding purposes, (2) commercial market producers who maintain sheep flocks to produce lambs for feeding and slaughter, and (3) commercial feed lot operators who feed lambs until ready for slaughter. The groups overlap and firms often perform two or more operations. Although many sheep production operations are located in the east, the majority of sheep are concentrated in the western and corn belt States. In the west and southwest, sheep production can be the most productive use of the land in some areas.

Packers and processors are the second component of the domestic lamb industry. Lamb packers are companies that slaughter lambs. Most packers also slaughter one or more other types of livestock. This part of the industry includes eight federally inspected firms accounting for 96 percent of the domestically slaughtered sheep and lambs. Processors, along with some packers, break lamb carcasses into

different cuts. There are less than 10 major processing firms and, like the packers, only a small portion of their operations are devoted to processing lamb.

Domestic lamb producers have been competing with surging foreign lamb imports. Between 1993 and 1997, lamb imports increased by 49.3 percent from 56.5 million pounds to 84.4 million pounds. The greatest increase in imports occurred during the period 1996 through 1997, when imports rose by 18.5 percent. Imports in 1998 were 30 percent above those in 1997, and imports in the first quarter of 1999 were 10 percent above those in the first quarter of 1998. As measured by quantity, imports captured 23.3 percent of the domestic market in January through September 1998, up from 11.2 percent in 1993. The loss of market share is magnified by the fact that domestic per capita lamb meat consumption dropped from 1.3 pounds in 1993 to 1.1 pounds in 1995 where it remained through 1997.

Increasingly, imports have shifted away from frozen, unprocessed carcasses to value-added product categories. In 1993, fresh or chilled lamb meat accounted for only 20 percent of imports. By 1997, the figure had doubled to 40 percent. Processed lamb, particularly boneless cuts, have replaced lamb carcasses. Carcasses represented only 3 percent of 1997 imports whereas bone-in and boneless boxed lamb cuts accounted for 66.8 percent and 30.2 percent, respectively, of the carcass-equivalent volume of imported lamb meat. Between January 1993 and June 1998, prices on imported Australian and New Zealand lamb, which account for virtually all imported lamb, were anywhere from 9.4 percent to 70.3 percent less expensive than domestic products.

With the increase in lamb imports, the domestic production, packing and processing of lamb has dropped significantly. Domestic lamb meat production declined by 26 percent from 326.7 million pounds in 1993 to 243 million pounds in 1999. Production was down 3 percent in May of 2000 compared to the same period in 1999. Domestic producers' share of the net sales value on lamb has also declined with imports representing 30.7 percent in January through September 1998, up from 11.2 percent in 1993. The number of domestic lamb producers has decreased from 93,280 in 1993 to 74,710 in 1997, a 20 percent decline. With an estimated 2.2 workers per operation, the decline in lamb producers translates into a drop in workers from 205,216 in 1993 to 164,362 in 1997. Federally

inspected sheep and lamb slaughtering plants have declined from 711 to 571. Only 9 plants can slaughter more than 100,000 sheep and lambs annually. One was closed in 1995 and another was closed in 1998.

Imports have also affected prices and sales. Direct prices for slaughter lambs dropped by 25 percent between the first quarter of 1997 and the first quarter of 1998. During the second quarter of 1998, direct prices were 17.6 percent lower than prices during the same period in 1997. Similarly, for the same periods, auction prices fell by 20.5 percent and 14.9 percent, respectively. For packers, prices on carcasses dropped 30.8 percent between September 1997 and April 1998.

In response to the surge in imports, domestic producers along with packers and processors filed a petition with the International Trade Commission (ITC) seeking import relief. ITC conducted an investigation (Investigation No. TA 201-68) and found that imports have depressed prices and sales of domestic lamb causing serious harm to domestic producers' financial conditions (ITC Publication 3176, April 1999). It also found that although there is evidence that U.S. consumers prefer domestically produced lamb, domestic producers engage in little or no promotion. In recommending relief, a majority of the commissioners stressed the need for an industry marketing program supported by checkoff funds to improve production efficiency and increase demand.

Because of the decline in the domestic lamb industry caused by imports and flat demand, domestic producers are seeking ways to reverse this trend. A checkoff program to promote and market domestic lamb products is one way this could be accomplished. A coordinated promotion and marketing effort will help domestic producers compete more effectively against imports while increasing demand for lamb. It will also permit domestic producers to fund projects to develop more effective and efficient production processes. More efficient production along with increased demand will lead to higher, more stable prices for producers, packers, and processors.

The Order authorizes that a mandatory assessment be paid by producers, seedstock producers, exporters, and feeders at a rate of one-half cent (\$.005) per pound of live lamb sold. First handlers will pay an additional assessment of 30 cents (\$.30) per head of lambs purchased by the first handler for slaughter and will remit the total amount of assessment due to the Board.

At the rate of assessment of one-half cent (\$.005) per pound of live lamb sold and the additional \$.30 paid by packers on slaughter lambs, the Board will collect approximately \$3 million annually. It is expected that the assessment represents less than 1 percent of producers' average return.

The program will be administered by the Board appointed by the Department from nominations submitted by certified industry organizations. The Department will certify industry organizations that will nominate producers, seedstock producers, feeders, and first handlers to serve as members on the Board. The Board will recommend the assessment rate, programs and projects, budgets, and any rules and regulations that might be necessary for the administration of the program.

The Board will consist of 13 members: six producer representatives, three feeder representatives, three first handlers, and one seedstock producer. The members primarily will be nominated by eligible regional, State, and national organizations.

The recordkeeping and reporting requirements for the Order have been designed to ensure compliance and generate the data necessary for the effective conduct of the program.

With regard to alternatives to this rule, the Act itself provides authority to tailor a program according to the individual needs of an industry. Section 514 of the Act provides for orders applicable to producers, first handlers, and other persons in the marketing chain as appropriate. Provision is made for permissive terms in an order in § 516 of the Act and authorizes an order to provide for coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for assessing imports; provision for reserve funds; and provision for credits for generic and branded activities. In addition, § 518 of the Act provides for a referendum to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under an order. An order also may provide for its approval in a referendum to be based upon (1) a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. Section 515 of the Act provides for establishment of a board from among producers, first handlers,

feeders, and others in the marketing chain as appropriate.

This Order includes provisions for domestic expansion and improvement and a delayed referendum to be conducted within 3 years after assessments begin. The Order will continue if a majority of those persons voting in the referendum who also represent a majority of the volume of lambs produced, slaughtered, or exported during the representative period established by the Department.

The Department has not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this rule. The proposed rule that was published in the **Federal Register** on September 21, 2001 [66 FR 48763], invited interested persons to submit comments to the Department concerning potential effects of the proposed Order. No comments were received regarding the RFA.

#### **Paperwork Reduction Act**

In accordance with OMB regulation (5 CFR Part 1320) that implements the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by this Order were submitted to OMB for approval and approved under OMB control numbers 0581-0198 and 0505-0001.

*Title:* Lamb Promotion, Research and Information Order.

*OMB Number:* 0505-0001. Expiration Date of Approval: July 31, 2002

*OMB Number:* 0581-0198.

*Expiration Date of Approval:* 3 years from date of approval.

*Type of Request:* Approval of new information collection.

*Abstract:* The information collection requirements in the request are essential to carry out the intent of the Act.

Under the Order, first handlers and exporters will be required to collect assessments from lamb producers, feeders, and seedstock producers and submit the required reports and remit assessments to the Board. Persons who are market agencies will be required to collect an assessment and pass the collected assessments on to the subsequent purchaser. It is not anticipated that they will be required to submit records of their transactions involving lamb purchases and the required assessment collection to the Board. While the Order will impose certain recordkeeping requirements on persons subject to the Order, information required under the Order can be compiled from records currently maintained. Such records will be retained for at least 2 years beyond the

fiscal year of their applicability. The estimated annual cost of providing the information to the Board by an estimated 70,804 respondents (51,800 producers, 15,000 seedstock producers, 3,318 market agencies, 571 first handlers, 100 feeders, and 15 exporters) is \$989,840 or \$13.98 per respondent. Each first handler and exporter responsible for the collection of assessments and remittance of the assessments to the Board, will do so by the 15th day of the month following the month in which lambs were purchased for slaughter, exported, or lambs or lamb products were marketed directly to a consumer. It is anticipated that the bulk of assessments will be submitted to the Board by first handlers who purchased lambs for slaughter. A person such as a producer or feeder is considered a first handler when that person markets lamb or lamb products of their own production directly to a consumer.

The Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements.

The forms will require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms will be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual producers, feeders, seedstock producers, first handlers, and exporters who are subject to the provisions of the Act. Therefore, there is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this Order include:

*(1) Background Information Form (AMS-755)*

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 0.5 hours per response for each producer, feeder,

seedstock producer, and first handler nominated to serve on the Board.

*Respondents:* Producers, seedstock producers, feeders, and first handlers.

*Estimated number of Respondents:* 10 (26 for initial nominations to the Board, 8 in the second year, and 8 in the third year).

*Estimated number of Responses per Respondent:* 1 every 3 years.

*Estimated Total Annual Burden on Respondents:* 13 hours for the initial nominations to the Board and 4 hours annually thereafter.

*Total Cost:* \$260 initial, \$80 thereafter.

*(2) Requirement to Maintain Records Sufficient to Verify Reports and Requests for Refunds Submitted Under the Order*

*Estimate of Burden:* Public recordkeeping burden for keeping this information is estimated to average 0.6 hours per record keeper maintaining such records.

*Recordkeepers:* Producers, seedstock producers, feeders, market agencies, first handlers, and exporters.

*Estimated number of Recordkeepers:* 71,039.

*Estimated Total Recordkeeping Hours:* 42,623.4 hours.

*Total Cost:* \$852,468.

*(3) Monthly Remittance Report Form (LS-81)*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 1 hour per first handler and exporter.

*Respondents:* First handlers and exporters.

*Estimated Number of Respondents:* 586.

*Estimated Number of Responses per Respondent:* 12.

*Estimated Total Annual Burden on Respondents:* 7,032 hours.

*Total Cost:* \$140,640.

*(4) Application for Refund Form (LS-85)*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.25 hours per response.

*Respondents:* Producers, seedstock producers, first handlers, feeders, and exporters.

*Estimated number of Respondents:* 67,486.

*Estimated Total Annual Burden:* 16,871.5 hours.

*Total Cost:* \$337,430.

*(5) Application for Certification of Organization Form (LS-82)*

*Estimate of Burden:* Public reporting burden for this collection of information

is estimated to average 0.5 hours per response.

*Respondents:* National, State, or regional lamb associations or organizations.

*Estimated number of Respondents:* 20.

*Estimated number of Responses per Respondent:* 1

*Estimated Total Annual Burden:* 10 hours.

*Total Cost:* \$200.

*(6) Nomination for Appointment to the Lamb Board Form (LS-84)*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

*Respondents:* National, State, or regional lamb associations and organizations.

*Estimated number of Respondents:* 20.

*Estimated number of Responses per Respondent:* 1 per year.

*Estimated Total Annual Burden:* 10 hours.

*Total Cost:* \$200.

*(7) Statement of Certification (Lamb Promotion, Research, and Information Order) (LS-83)*

*Estimate of Burden:* The Deputy Administrator or designee of the Agricultural Marketing Service's (AMS), Livestock and Seed Program will sign this form certifying eligible organizations to make nominations to the Board. Because only AMS employees will complete this form, the estimated average reporting burden would not apply to the public.

The burden hours reported in the final rule reflect a decrease of 141 hours from the proposed rule. This decrease was the result of a mathematical error in calculating the total number of respondents.

In the proposed rule published September 21, 2001 [66 FR 48763], comments were invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the Department's oversight of the program, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology. No comments were received regarding the information collection section.

### Background

The Act authorizes the Department to establish agricultural commodity research and promotion orders. The Act provides for the submission of proposals for a lamb promotion, research, and information order by industry organizations or any other interested persons affected by the Act. Section 516 of the Act provides permissive terms for orders, and other sections provide for alternatives. For example, § 514 of the Act provides for orders applicable to (1) producers, (2) first handlers, (3) feeders and others in the marketing chain as appropriate. Section 516 authorizes an order to provide for exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports. In addition, § 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the order. The Act authorizes three different voting methods for approving an order in a referendum. Section 515 provides for establishment of a board from among producers, seedstock producers, first handlers, feeders, and others in the marketing chain as appropriate.

This Order includes provisions for both domestic and foreign market expansion and improvement and a delayed referendum to be conducted within 3 years after assessments begin. The Order will continue if a majority of those persons voting who also represent a majority of the volume of lambs produced, slaughtered or exported during the representative period established by the Department.

The Act authorizes the establishment and operation of generic promotion programs that may include a combination of promotion, research, and information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. This Order provides for the development and financing of an effective and coordinated program of research, promotion, and information for lamb and lamb products. The

purpose of the Order is to strengthen the position of lamb and lamb products in domestic and foreign markets, and to develop, maintain, and expand markets for lamb and lamb products. The Order will be continued subject to its approval in a delayed referendum conducted by the Department. Section 518 of the Act provides for the Department (1) to conduct a required referendum, preceding a proposed Order's effective date, among persons who would be subject to assessments under the program or (2) to implement a proposed Order, pending the conduct of a referendum, among persons subject to assessments, within 3 years after assessments first begin. In accordance with section 518(e) of the Act, an Order may provide for its approval in a referendum based upon (1) a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. This Order provides for a delayed referendum to be conducted using the third approval option. Thus, the Department will conduct a referendum within 3 years after assessments first begin, in which approval of the Order will be determined by a majority of persons voting for approval who also represent a majority of the volume of lamb production represented in the referendum. The Act also requires the Department to conduct subsequent referenda: (1) Not later than 7 years after assessments first begin under the Order; (2) at the request of the Board established under the Order; or (3) at the request of 10 percent or more of the number of persons eligible to vote. In addition to these criteria, the Act provides that the Department may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by persons eligible to vote.

The Order also contains provisions that will allow persons to request a refund of assessments paid during the period beginning on the effective date of the Order and ending on the date the Department announces the results of the required referendum. The refunds will be paid from an escrow account established by the Board as provided for in § 1280.214(c). Persons who file a request for refunds during the specified time period will be entitled to a refund of assessments paid from the effective date of the Order until the Department announces the results of the

referendum. If the amount in the escrow fund is less than the total refunds demanded, persons entitled to a refund will receive a pro rata share.

A national research and promotion program for lamb and lamb products will help the industry to address the many market problems it currently faces. Domestic lamb producers have been competing with surging foreign lamb imports, competition from other meat and poultry, and changing consumer meat buying preferences.

Increased funding will allow the industry to expand its current consumer, food service, and food manufacturer promotion efforts. Also it will allow for increased participation in the Department's Market Access Program and the opportunity to develop stronger markets overseas. In addition, such a program will create the opportunity to explore tie-in promotional activities with nationally branded food products that will help the lamb industry gain advertising and in-store exposure.

The assessment levied on domestically-produced lamb will be used to pay for promotion, research, and information as well as administration, maintenance, and functioning of the Board. Expenses incurred by the Department in implementing and administering the Order, including referenda costs, also will be paid from assessments.

Sections 516(e)(1) and (2) of the Act states that the Department may provide credits of assessments for generic and branded activities. The Order does not contain such provisions. Therefore, the terms generic activities and branded activities are not defined in the Order.

First handlers and exporters will be responsible for the collection of assessments and remittance of assessments to the Board. First handlers and exporters will be required to maintain records of lambs purchased from each producer, seedstock producer, and feeder, by the first handler or exporter, including lambs produced or fed by the first handler or exporter. First handlers and exporters will be required to file reports regarding the collection, payment, and remittance of the assessments. In addition, a person who is a market agency; i.e., commission merchant, auction market, or livestock market in the business of receiving lambs for sale on commission for or on behalf of a producer, seedstock producer, or feeder will be required to collect the assessment and pass the collected assessments on to the subsequent purchaser and if applicable certify as required by regulations approved by the Department that the

provisions of § 1280.217(b) have been met.

All information obtained from persons subject to this Order as a result of recordkeeping and reporting requirements will be kept confidential by all officers, employees, and agents of the Department and of the Board. This information may be disclosed only if the Department considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Department or to which the Department or any officer of the Department is a party. Other exceptions for disclosure of confidential information include the issuance of general statements based on reports or on information relating to a number of persons subject to an order if the statements do not identify the information furnished by any person, or the publication, by direction of the Department, of the name of any person violating the Order, and a statement of the particular provisions of the Order violated by the person.

The Act requires that an order provide for the establishment of a board to administer the program under the Department's supervision. This Order provides for a 13-member Board to ensure fair and equitable representation of the lamb industry on the Board. The Act requires membership on the Board to reflect the geographical distribution of the production of lamb and lamb products. To that end, the Order divides the United States into two geographic regions with each region being represented by at least two lamb producers and the remaining two producers appointed at the Department's discretion. Such at large selections by the Department will not be chosen or bound by any specific geographic region. There will be three lamb feeder members on the Board. At least one feeder will feed less than 5,000 lambs annually, at least one feeder will feed 5,000 or more lambs annually and the remaining feeder will be appointed at the Department's discretion and will not be chosen or bound by size requirements. Three first handlers and one seedstock producer will be appointed as members of the Board. Members will serve for 3-year terms, except that the members appointed to the initial Board will serve proportionately for 1, 2, and 3 years. No member will serve more than two consecutive 3-year terms.

Upon implementation of the Order and pursuant to the Act, the Board will at least once in each 5-year period, but not more frequently than once in each 3-year period, review the geographical

distribution of lamb in the United States and make a recommendation to the Department after considering the results of its review and other information it deems relevant regarding the reapportionment of the Board.

In response to invitations to submit proposals published in the **Federal Register** November 23, 1999 [64 FR 65665], and January 12, 2000 [65 FR 1825], a proposed Order developed by the Lamb Industry Checkoff Exploration Team was submitted by the Proponent I. Proponent I proposed a program assessing lamb producers, feeders, first handlers, and seedstock producers. In addition, two partial proposals were submitted by Proponent II and Proponent III. Proponent II proposed definitions for feeder, producer, and seedstock producer and that the Department should be authorized to appoint only one feeder representative who annually feeds 5,000 or more head of lambs and to appoint two feeders who annually feed less than 5,000 head of lamb. Proponent III proposed that the Order be approved in a referendum by a majority of those voting.

The Order is summarized as follows: Sections 1280.101 through 1280.129 of the Order define certain terms such as lamb, producer and first handler, which are used in the Order.

Sections 1280.201 through 1280.211 include provisions relating to the Board. These provisions cover establishment and membership, nominations, nominee's agreement to serve, appointment, vacancies, certification of organizations, term of office, compensation, removal, prohibited activities, and powers and duties of the Board, which is the governing body authorized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about lamb and lamb products, subject to oversight of the Department.

Sections 1280.212 through 1280.216 cover budget and expenses; require the Board to submit a budget for the fiscal year covering anticipated expenses and disbursements, investment of funds, escrow accounts, refunds, and procedures for obtaining a refund.

Sections 1280.217 through 1280.221 cover lamb purchases and authorize the collection of assessments; specify limitations on the use of funds; and specify who pays the assessment and how.

Sections 1280.222 through 1280.227 cover maintaining books and records, accounting for the receipt and disbursement of all funds; reports from each first handler to the Board including

the number of lambs purchased and amount remitted, and use and confidentiality of information. Also, every 5 years, the Board funds an independent evaluation of the program.

Sections 1280.228 through 1280.236 discuss the rights of the Department; personal liability; separability; patents, copyrights, inventions, product formulations, and publications; amendments; referenda, which will be delayed (required referenda); suspension or termination; proceedings after termination; and effects of termination or amendment.

On June 25, 2001, the United States Supreme Court issued a decision in the case of *United States v. United Foods, Inc. (United Foods)*, that held that the imposition of mandatory assessments to fund generic mushroom advertising violated the First Amendment insofar as it required the mushroom industry to subsidize commercial speech with which they disagreed. The Court expressly declined to reach the question whether the generic advertising conducted under the mushroom program constitutes Government speech.

#### Comments

AMS issued invitations to submit proposals for an Order in the November 23, 1999 [64 FR 65665], and January 12, 2000 [65 FR 1825], issues of the **Federal Register**. In response to invitations to submit proposals, a proposed Order developed by the Lamb Industry Checkoff Exploration Team was submitted by the Proponent I. Proponent I proposed a program assessing lamb producers, feeders, first handlers, and seedstock producers. In addition, two partial proposals were submitted by the Proponent II and Proponent III. Proponent II proposed definitions for feeder, producer, and seedstock producer and that the Department should be authorized to appoint only one feeder representative who annually feeds 5,000 or more head of lambs and to appoint two feeders who annually feed less than 5,000 head of lamb. Proponent III proposed that the Order be approved in a referendum by a majority of those voting. As provided in the Act, on September 21, 2001, AMS published the proposed Order for comment [66 FR 48764]. The comment period ended November 20, 2001.

The Department received 242 comments in a timely manner. In addition, six late comments were received. The late comments generally reflected the substance of comments timely received. The bulk of comments were submitted by individual lamb producers. About 49 comments were

received from organizations representing lamb producers, feeders, and farmers. The comments have been posted on AMS' website at (<http://www.ams.usda.gov/lsg/mpb/rp-lamb.htm>).

The changes suggested by commenters are discussed below, along with the changes made by the Department upon further review. Also, the Department has made other miscellaneous changes for the purpose of clarity and accuracy. For the readers' convenience the discussion of comments is organized by the topic headings of the proposed rule.

### Background Section

One commenter stated that the background of the proposed Order gives an unworthy goal of trying to compete with imports and suggested that the goal should be to cooperate with importers to increase total lamb consumption. Section 1280.210(m) of the Order states that the duty of the Board is to work to achieve an effective, continuous, and coordinated program of promotion, research, and information designed to strengthen the lamb industry's position in the marketplace; maintain and expand existing markets and uses for lamb and lamb products; and to carry out programs, plans, and projects designed to provide maximum benefits to the lamb industry. The program will be funded entirely with assessments on the domestic lamb industry. Accordingly, this suggestion is not adopted.

### Definitions

#### *Section 1280.108 First Handler*

One commenter suggested that the definition of first handler should be modified to clarify that it is a packer. Section 1280.108 of the Order states that the term first handler "means the packer or other person \* \* \*". The Department believes that the current definition sufficiently defines that the first handler includes packers. Accordingly, this change is not needed as a result of this comment.

#### *Section 1280.111 Lamb*

One commenter suggested that the definition of lamb should be "every sheep sold, whatever age." The Department believes that the proposed definition of lamb, which uses the term "ovine"—meaning of or relating to sheep—sufficiently indicates that all sheep are covered by the Order and is generally accepted by the industry. Accordingly, this suggestion is not adopted.

### Lamb Promotion, Research, and Information Board

#### *Section 1280.201 Establishment and membership*

One commenter suggested that the Board should have four producer members from west of the Mississippi and two producer members east of the Mississippi to more fairly represent the demographics of sheep producers and sheep numbers. Another commenter suggested that the size and geographic requirements for producer representatives on the Board should be relaxed. Due to geographical concerns and the size of producer operations issues to be considered when the Department is making appointments to the Board, the Department believes that simply changing the number of producers representing the regions could be unduly restrictive. However, § 1280.201(a)(1) of the Order has been modified so that each region will be represented by at least two producers and that the remaining two producers will be appointed at the Department's discretion. Such at large selections by the Department will not be chosen or bound by any specific geographic region. This modification will allow the Department the flexibility to appoint producers as deemed necessary.

One commenter suggested that producers should be able to vote for nominees to the Board. Section 1280.202 of the Order provides that only eligible certified organizations representing producers, feeders, first handlers, or seedstock producers may submit nominations for the Board for the Department's consideration. The membership of each certified organization is charged with nominating qualified individuals. Producers are members of such organizations and their interests are represented through these organizations. Accordingly, this suggestion is not adopted.

One commenter suggested that the Board should be larger and more inclusive so that it fairly represents the entire industry. Two commenters suggested that packers need additional seats on the Board that would be representative of their financial contributions to the program. The Department believes that the Board accurately represents all interests of the industry—producers, feeders, seedstock producers, and packers. However, § 1280.201 has been modified to provide first handlers with an additional seat to better reflect their participation in the industry. Accordingly, this suggestion has been adopted in part.

One commenter suggested that the number of feeder representatives on the

Board should be reduced to one and that the Board should have two "friends of the industry" members who have business experience in marketing. The Department believes that the proposed composition of the Board fairly represents the stakeholders of the industry and does not believe "friends of the industry" members are necessary. Therefore, this suggestion is not adopted.

One commenter suggested that potential Board members should have business experience in finance, marketing, and distribution. Certified State, regional, or national organizations are charged with nominating the individuals they believe are most qualified to serve on the Board and may consider such criteria if they choose. Accordingly, this suggestion is not adopted.

One commenter suggested that the Department may have difficulty complying with the criteria for appointing feeders in that it could be difficult to find a feeder of over 5,000 head annually east of the Mississippi. The commenter suggested that the language be modified to say "at least" one feeder who feeds more than 5,000 head annually as opposed to the current requirements of one feeder who feeds less than 5,000 annually and two feeders who feed more than 5,000 head annually. The Department believes that this suggestion has merit because it may be difficult to find feeders who feed more than 5,000 head annually east of the Mississippi. In order to provide the Department greater flexibility in making appointments, § 1280.201(a)(2) of the Order has been modified so that the Department will appoint at least one feeder representative who feeds 5,000 head or more annually and at least one feeder representative who feeds less than 5,000 head annually. The third feeder representative will be appointed at the Department's discretion and will not be chosen or bound by size requirements. Accordingly, this suggestion has been adopted in part.

#### *Section 1280.202 Nominations*

Several commenters suggested that the number of Board members appointed from nominations submitted by any one certified organization should be limited to four. The Department believes that such a limitation could unduly restrict the Department from making appointments to the Board as well as unduly restrict the certified organizations from making nominations for appointment to the Board. Accordingly, this suggestion is not adopted.

*Section 1280.210 Powers and Duties of the Board*

One commenter suggested that the Department should be required to issue an annual report detailing the Board's activities. Section 1280.210(n) of the Order requires the Board to provide, not less than annually, a report accounting for the funds expended by the Board and describing programs implemented under the Act. Annual reporting by the Department as suggested by the commenter would be duplicative of the Board's actions. Accordingly, this suggestion is not adopted.

Several commenters expressed concern that there will not be sufficient funds generated to carry out all three focus areas of the Order. Several other commenters suggested that all checkoff dollars should be used to develop and produce an advertising program for lamb and lamb products. The Act provides for a coordinated program of generic promotion, research, and information activities and places the responsibility with the Board, subject to approval of the Department, to ensure that funds are allocated among the focus areas of the Order. The Department believes that the Order provides the necessary framework for the Board to meet the objectives as set forth in the Act. Accordingly, this suggestion is not adopted.

One commenter suggested that money for grower education efforts should be limited to project information and financial statements because too much money is spent on communicating with producers in other promotion programs. Board members will make recommendations, subject to the approval of the Department, as to how the checkoff dollars should be allocated among the various program areas. Accordingly, this suggestion is not adopted.

One commenter suggested that there should be a limit on contracts to a contractor in that no single entity should be permitted to receive more than 50 percent of checkoff funds available each year for promotion, research, and information activities. The Department believes that it is best to provide flexibility to the Board when contracting for services. In addition, all contracts in which the Board enters will be subject to final approval by the Department. Accordingly, this suggestion is not adopted.

One commenter suggested that funds from the national program should be used to supplement activities currently being conducted by State organizations. The Act does not provide authority for national program funds to be shared

with State programs. However, the Act and Order do not prohibit the Board from conducting joint research, promotion, and information activities with State or national organizations. Accordingly, this suggestion is not adopted.

*Section 1280.212 Budget and Expenses*

One commenter expressed concern that a majority of the assessments collected will be used for staffing and administrative costs. Section 1280.212(g) of the Order limits the amount of money that can be used for administrative expenses to 10 percent of the Board's income for that fiscal year, except for the initial fiscal year.

One commenter suggested that petitioners for a checkoff should have to reimburse the Department for any expenses to conduct a referendum. Section 518(c)(3) of the Act and § 1280.233(b)(3) of the Order provide for eligible persons to request a referendum. Section 518(f) of the Act and § 1280.233(d) of the Order state that the Board shall reimburse the Department for any expenses incurred by the Department to conduct referenda. Accordingly, no change is adopted as a result of this comment.

*Section 1280.214 Refund Escrow Accounts*

One commenter suggested that the Board should have to set aside 100 percent of funds so that 100 percent of the refund requests can be paid. Another commenter suggested that the Department should clarify that refunds requested prior to the announcement of the referendum results will be paid in full. Section 517(g) of the Act provides that ten percent of the assessments collected be placed in an escrow account and for a pro rata share to be paid if assessments are not sufficient to reimburse 100 percent of the refunds requested. The Act also states that refunds can only be provided after the results of the referendum are announced. Accordingly, this suggestion is not adopted.

**Assessments**

*Section 1280.217 Lamb Purchases*

One commenter expressed confusion as to how assessments would be paid by an individual who sells lamb and lamb products of his own production directly to consumers. Sections 1280.217(c) and (e) of the Order state that each person processing or causing to be processed lamb or lamb products of that person's own production and marketing such lamb or lamb products is required to

pay an assessment of one-half of a cent per pound on the live weight of the lamb at the time of slaughter. In addition, pursuant to § 1280.108 of the Order, such individual would be considered a first handler and would be required by § 1280.219 of the Order to pay an additional assessment of \$.30 per head. As a first handler, the individual must remit the total amount of assessment to the Board.

Several commenters suggested that packers should be required to pay more into the program. The rate of assessment was recommended in the proposal submitted by Proponent I based on recommendations by the Lamb Industry Checkoff Exploration Team in collaboration with other members of the industry. The Department believes that this assessment rate properly reflects the position of packers in the industry and is reasonable at this time. Accordingly, this suggestion is not adopted.

Several commenters suggested that the Order should have a provision for assessing imported lamb and lamb products. Section 517(a) of the Act provides that importers may be assessed if they are covered under the Order. The proposed Order submitted by Proponent I did not provide for the assessment of imports. It is the desire of most of the industry at this time to exclude assessing imports so that "American lamb" can be promoted. If importers were to be assessed, this may not be possible. In the mid-1990's a Sheep and Wool Promotion, Research, Education, and Information Order was proposed to the lamb industry, which included importers. This proposed program was not approved in the referendum by producers, feeders and importers, and it is believed that including importers in the sheep program may have contributed to its failure. The Department does not believe that a change in this provision is warranted. Accordingly, this suggestion is not adopted.

Several commenters believe that many producers may have to pay both a State and national checkoff due to current programs that are already in place at the State level. The commenters further assert that promotion programs that are now run through the State organizations will be hurt because of the loss of voluntary contributions that will likely occur when the national program is put in place. Many State checkoff programs are voluntary. Neither the Act nor the Order prohibits the Board from conducting joint research, promotion, and information activities with State or national organizations.

## Miscellaneous

### Section 1280.233 Referenda

Several commenters oppose having the Order subject to continuance in a delayed referendum. The commenters suggested that those subject to the program should have the right to vote on its approval prior to beginning assessments. Section 518 of the Act provides for the Department (1) to conduct a required referendum, preceding a proposed Order's effective date, among persons who would be subject to assessments under the program or (2) to implement a proposed Order, pending the conduct of a referendum, among persons subject to assessments, within three years after assessments first begin. The proposed Order, which recommended approval in a delayed referendum, was drafted utilizing recommendations from both the Lamb Industry Checkoff Exploration Team and from those in the industry. A delayed referendum will provide those subject to the program ample time to judge its effectiveness. A delayed referendum will allow assessments to begin much more quickly so that the industry can implement promotions and other programs as soon as possible. Accordingly, this suggestion is not adopted.

Numerous commenters suggested that continuance referenda should be conducted at various lengths of time, including from every 3 years to every 10 years, to determine if those subject to the program still favor its approval. Section 518(c) of the Act and § 1280.233 of the Order state that the Department shall conduct subsequent referendum: (1) Not later than seven years after assessments first begin under the Order; (2) at the request of the Board established under the Order; or (3) at the request of ten percent or more of the number of persons eligible to vote. In addition, § 518(d) of the Act provides that the Department may conduct a referendum at any time to determine whether continuation, suspension, or termination of the Order or a provision of the Order is favored by persons eligible to vote. The Department believes this provides ample opportunity for conducting additional referenda. Accordingly, the Department believes these suggestions are reflected in the Act and Order.

Several commenters oppose allowing the Department the right to call for a referendum at any time. Section 518(d) of the Act provides that the Department may conduct a referendum at any time to determine whether continuation, suspension, or termination of the Order or a provision of the Order is favored by

persons eligible to vote. Therefore, this suggestion is not adopted.

One commenter suggested that a referendum should be required to increase the checkoff rate. While the Order contains no provision for this type of referendum, § 1280.217(e) of the Order has been modified to clarify the process by which the assessment rate may be changed. Periodic referenda provide an opportunity for those that contribute to the program a chance to vote whether to continue, suspend or terminate the program. Accordingly, this suggestion is not adopted.

Several commenters assert that it is unclear how voting by majority volume works and asked how the Department will determine a voter's volume. Another commenter suggested that eligible voters should be defined as producers, feeders, first handlers, and exporters, or their legal representatives who are at least 18 years of age. The Department will issue separate referendum rules at a later date that will describe the voting process.

### General

One commenter suggested that implementation of the Order will hinder the marketing efforts currently undertaken by lamb processors in cooperation with some importers. The Order does not preclude processors or other entities from conducting marketing activities with their own funds if they so choose. In addition, the Board may perform joint research, promotion, and information activities with processors to use checkoff dollars in a more effective and efficient manner.

Several commenters suggested that because other checkoff programs are under legal challenge and because of the Supreme Court's ruling on the Mushroom Checkoff Program, a new checkoff program should not be implemented until the fate of the other programs is known. The Department believes and continues to be of the view that the Lamb Promotion, Research, and Information Order as previously proposed and with changes included in this action, is constitutionally sound. Accordingly, this suggestion is not adopted.

A few commenters suggested that because the sheep industry voted down the last proposed checkoff program, a new program should not be implemented. The Department believes that a new lamb research and promotion program is appropriate at this time for several reasons. First, the lamb industry has undergone significant change since the last proposed Order was defeated. In addition, this program is substantially different from the previous program that

was voted down. Finally, this new program is based in part on recommendations made by the ITC as part of conducting its investigation concerning the importation of lamb products. Therefore, this suggestion is not adopted.

Several comments were submitted on issues that are not within the scope of this regulation (e.g., country of origin labeling, imported carcass grading, exchange rate with other countries, packer consolidation). Therefore, they will not be considered and will not be addressed herein.

One commenter suggested that the Lamb Industry Checkoff Exploration Team should reconvene to discuss comments and concerns regarding the proposed checkoff. The Department is following the informal rulemaking process in which all comments submitted on the proposed Order have been taken into consideration and responded to by the Department. The proposed rule provided that all interested persons could comment, including the proponents. Accordingly, this suggestion is not adopted.

The Department did not receive any comments on the two partial proposals that were published for comment in the proposed rule. The partial proposal submitted by Proponent II proposed also definitions for feeder, producer, and seedstock producer. These definitions are similar to those proposed by Proponent I. The Department believes that the definitions for the terms as proposed are clear and accurate. Accordingly, the Proponent II definitions have not been adopted. In addition, Proponent II proposed that the size requirements for appointing feeder representatives to the Board should be modified to provide feeders that feed less than 5,000 head of lamb annually with two seats on the Board. In order to provide the Department greater flexibility in making appointments, § 1280.201(a)(2) of the Order has been modified so that the Department will appoint at least one feeder representative who feeds 5,000 head or more annually and at least one feeder representative who feeds less than 5,000 head annually. The third feeder representative will be appointed at the Department's discretion and will not be chosen or bound by size requirements. Accordingly, this partial proposal has been modified and accepted in part.

The partial proposal submitted by Proponent III proposed that the final Order be subject to approval in a referendum by a majority of those persons voting for approval. In accordance with Section 518(e) of the Act, an Order may provide for its

approval in a referendum based upon (1) a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. The proposed Order, which was submitted by Proponent I based on recommendations by the Lamb Industry Checkoff Exploration Team in collaboration with other members of the industry, recommended that the third approval option be utilized. Accordingly, this proposal has not adopted.

The Department has determined that this Order is consistent with and will effectuate the purposes of the Act. Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This action establishes the Order, under the Act, by providing for an industry-funded promotion, research, and information program for lamb and lamb products including pelts but excluding wool and wool products. The program applies to all sales of sheep and lambs. By establishing this rule in a timely manner the domestic lamb industry can more readily begin a national promotion and research program for lamb and lamb products that will help the industry address the marketing difficulties it currently faces.

Accordingly, this rule would benefit the lamb industry by allowing them to establish the Order and begin seeking ways to reverse the decline in the domestic lamb industry. The ITC in recommending relief from imports stressed the need for an industry marketing program supported by checkoff funds to improve production efficiency and increase demand. Given the current need for this checkoff program, it is necessary to implement these regulations as soon as possible.

#### List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Lamb and Lamb product, Consumer information, Marketing agreements, Reporting and record keeping requirements.

For the reasons set forth in the preamble, Title 7 of Chapter XI of the Code of Federal Regulations is amended by adding part 1280 to read as follows:

## PART 1280—LAMB PROMOTION, RESEARCH, AND INFORMATION ORDER

### Subpart A—Lamb Promotion, Research, and Information Order

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#### Lamb Promotion, Research, and Information Board

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1280.212	Budget and expenses.
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#### Miscellaneous

1280.228	Right of the Secretary.
1280.229	Personal liability.
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#### Subparts B–E—[Reserved]

Authority: 7 U.S.C. 7411–7425.

### Subpart A—Lamb Promotion, Research, and Information Order

#### Definitions

##### § 1280.101 Act.

*Act* means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425; Pub. L. 104–127; 110 Stat. 1029, as amended), or any amendments thereto.

##### § 1280.102 Board.

*Board* means the Lamb Promotion, Research, and Information Board established pursuant to § 1280.201.

##### § 1280.103 Certified organization.

*Certified organization* means any organization which has been certified by the Secretary pursuant to this part as being eligible to submit nominations for membership on the Board.

##### § 1280.104 Conflict of Interest.

*Conflict of interest* means a situation in which a member or employee of a board has a direct or indirect financial interest in a person that performs a service for, or enters into a contract with, a board for anything of economic value.

##### § 1280.105 Department.

*Department* means the United States Department of Agriculture.

##### § 1280.106 Exporter.

*Exporter* means any person who exports domestic live lambs from the United States.

##### § 1280.107 Feeder.

*Feeder* means any person who acquires ownership of lambs and feeds such lambs in the U.S. until they reach slaughter weight.

##### § 1280.108 First handler.

*First handler* means the packer or other person who buys or takes possession of lambs from a producer or feeder for slaughter, including custom

slaughter. If a producer or feeder markets lamb products directly to consumers, the producer or feeder shall be considered to be a first handler with respect to such lambs produced by the producer or feeder.

**§ 1280.109 Fiscal period and marketing year.**

*Fiscal period and marketing year* means the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

**§ 1280.110 Information.**

*Information* means information and programs that are designed to increase efficiency in producing lambs, to maintain and expand existing markets, and to develop new markets, marketing strategies, increased market efficiency, and activities that are designed to enhance the image of lamb and lamb products on a national or international basis. These include:

(a) Consumer information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, and nutritional attributes of lamb and lamb products; and

(b) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the lamb industry, and activities to enhance the image of lamb.

**§ 1280.111 Lamb.**

*Lamb* means ovine animals of any age, including ewes and rams.

**§ 1280.112 Lamb products.**

*Lamb products* means products produced in whole or in part from lamb, including pelts, and excluding wool and wool products.

**§ 1280.113 Order.**

*Order* means an order issued by the Secretary under § 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

**§ 1280.114 Part and subpart.**

*Part* means the Lamb Promotion, Research, and Information Order and all rules and regulations issued pursuant to the Act and the Order. The Order shall be a *subpart* of the Part.

**§ 1280.115 Person.**

*Person* means any individual, group of individuals, partnership, corporation,

association, cooperative, or any other legal entity.

**§ 1280.116 Producer.**

*Producer* means any person who owns and produces lambs in the United States for sale.

**§ 1280.117 Producer information.**

*Producer information* means activities designed to provide producers, feeders, and first handlers with information relating to production or marketing efficiencies, development of new markets, program activities, or other information that would facilitate an increase in the demand for lambs or lamb products.

**§ 1280.118 Promotion.**

*Promotion* means any action, including paid advertising and the dissemination of culinary and nutritional information and public relations with emphasis on new marketing strategies, to present a favorable image of U.S. lamb products to the public for the purpose of improving the competitive position of U.S. lamb and lamb products in the marketplace and to stimulate sales.

**§ 1280.119 Referendum.**

*Referendum* means a referendum to be conducted by the Secretary pursuant to the Act whereby producers, feeders, first handlers, and exporters shall be given the opportunity to vote to determine whether the continuance of this subpart is favored by a majority of eligible persons voting and a majority of volume voting.

**§ 1280.120 Research.**

*Research* means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of lamb or lamb products.

**§ 1280.121 Secretary.**

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

**§ 1280.122 Seedstock producer.**

*Seedstock producer* means any lamb producer in the U.S. who engages in the production and sale of breeding replacement lambs or semen or embryos.

**§ 1280.123 State.**

*State* means each of the 50 States and the District of Columbia.

**§ 1280.124 Suspend.**

*Suspend* means to issue a rule under § 553 of title 5, U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

**§ 1280.125 Terminate.**

*Terminate* means to issue a rule under § 553 of title 5, U.S.C., to cancel permanently the operation of an order or part thereof beginning on a date certain specified in the rule.

**§ 1280.126 Unit.**

*Unit* means each State, group of States, or class designation (producers, feeders, first handlers, or seedstock producers) that is represented on the Board.

**§ 1280.127 United States.**

*United States* means collectively the 50 States and the District of Columbia.

**§ 1280.128 Wool.**

*Wool* means fiber from the fleece of a lamb.

**§ 1280.129 Wool products.**

*Wool products* means products produced, in whole or in part, from wool and products containing wool fiber, excluding pelts.

**Lamb Promotion, Research, and Information Board**

**§ 1280.201 Establishment and membership.**

(a) There is hereby established a Lamb Promotion, Research and Information Board of 13 members. Members of the Board shall be appointed by the Secretary from nominations submitted in accordance with this subpart. The seats shall be apportioned as follows:

(1) *Producers*. There shall be six producer representatives on the Board appointed by the Secretary from nominations submitted pursuant to this subpart. For purposes of nominating and appointing producers to the Board, the United States as defined within this subpart shall be divided into two regions. Each region must be represented by at least two producers. The Secretary will appoint the remaining two producers to ensure that the criteria specified in paragraphs (a)(1)(i), (ii), and (iii) of this section are met. Region 1 shall include the geographic area east of the Mississippi River, which includes the following States: Maine, New Hampshire, Vermont, New York, Massachusetts, Connecticut, Pennsylvania, Rhode Island, New Jersey, Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South

Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Michigan, Illinois and Wisconsin. Region 2 shall consist of all States west of the Mississippi River, which includes the following states: Minnesota, Iowa, Missouri, Arkansas, Louisiana, Texas, Oklahoma, Kansas, Nebraska, North Dakota, South Dakota, Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Washington, Oregon, Nevada, California, Hawaii and Alaska. With regard to appointments to the Board, the Secretary shall ensure that the representation for producers on the Board shall meet the following criteria:

(i) Two producers appointed to the Board shall own annually 100 or less head of lambs;

(ii) One producer shall own annually between 101 and 500 head of lambs; and

(iii) Three producers shall own more than 500 head of lambs annually.

(2) *Feeders.* There shall be three feeder representatives on the Board appointed by the Secretary from nominations submitted pursuant to this subpart. The Secretary will appoint two feeder representatives to ensure that the criteria in paragraphs (a)(2)(i), (ii) and (iii) of this section are met. The third feeder representative will be appointed by the Secretary and will not be chosen or bound by size requirements.

(i) At least one of the feeders appointed to the Board shall feed less than 5,000 head of lambs annually.

(ii) At least one of the feeders appointed to the Board shall feed 5,000 or more head of lambs annually.

(iii) The Secretary shall ensure that the feeders appointed to the Board are not all located in one geographic region as established for producers pursuant to paragraph (a)(1) of this section.

(3) *First handlers.* There shall be three first handler representatives appointed to the Board by the Secretary from nominations submitted pursuant to this subpart.

(4) *Seedstock producers.* There shall be one seedstock producer appointed to the Board by the Secretary from nominations submitted pursuant to this subpart.

(b) In soliciting nominations for the Board, the Secretary will request those nominating to identify specific categories in which nominees will qualify.

(c) *Adjustment of membership.* At least once every 5 years, the Board will review the geographical distribution of the United States production of lambs. The review will be conducted using the National Agricultural Statistics Service inventory figures and the Board's annual assessment receipts. If

warranted, the Board will recommend to the Secretary that the membership on the Board be adjusted to reflect changes in geographical distribution of domestic lamb production.

#### § 1280.202 Nominations.

All nominations authorized under this section shall be made in the following manner:

(a) Nominations shall be obtained by the Secretary from eligible organizations certified under § 1280.206. Certified eligible organizations representing producers, feeders, first handlers, or seedstock producers shall submit to the Secretary at least two nominees for each seat on the Board. If the Secretary determines that a unit is not represented by a certified eligible organization, then the Secretary may solicit nominations from other organizations or other persons residing in the unit.

(b) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. Nomination for subsequent Board members shall be submitted to the Secretary not less than 60 days prior to the expiration of the terms of the members whose terms are expiring, in the manner as described in this section. In the case of vacancies due to reasons other than the expiration of a term of office, successor Board members shall be appointed pursuant to § 1280.205.

(c) When there is more than one certified eligible organization representing the unit or when the Secretary solicits nominations from organizations and persons residing in that unit, they may caucus and jointly nominate, two qualified persons for each position representing that unit on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary two nominees for each appointment to be made to represent that unit.

#### § 1280.203 Nominee's agreement to serve.

Any producer, feeder, first handler, or seedstock producer 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 any lamb promotion entity or with any organization that has or is being considered for a contractual relationship with the Board; and

(c) Withdraw from participation in deliberations, decision-making, or voting on matters that concern the

relationship disclosed under paragraph (b) of this section.

#### § 1280.204 Appointment.

From the nominations made pursuant to § 1280.202, the Secretary shall appoint the members of the Board on the basis of representation provided in § 1280.201.

#### § 1280.205 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations for the position or the Secretary shall request nominations for a successor pursuant to § 1280.202 and such successor shall be appointed pursuant to § 1280.204.

#### § 1280.206 Certification of organizations.

(a) *In General.* The eligibility of State, regional, or national organizations to represent producers, seedstock producers, feeders, and first handlers and to participate in the making of nominations under this subpart shall be certified by the Secretary. The Secretary shall certify any organization that the Secretary determines meets the eligibility criteria established under paragraphs (b) and (c) of this section. An eligibility determination by the Secretary shall be final.

(b) *Basis for Certification.* Certification shall be based upon, in addition to other available information, a factual report submitted by the organization that shall contain information considered relevant and specified by the Secretary, including:

(1) The geographic territory covered by the active membership of the organization;

(2) The nature and size of the active membership of the organization, including the number of active producers, seedstock producers, feeders, or first handlers represented by the organization;

(3) Evidence of stability and permanency of the organization;

(4) Sources from which the operating funds of the organization are derived;

(5) The functions of the organization; and

(6) The ability and willingness of the organization to further the purpose and objectives of the Act.

(c) *Primary Considerations.* The primary considerations in determining the eligibility of an organization under this paragraph shall be whether:

(1) The membership of the organization consists primarily of producers, seedstock producers, feeders, or first handlers who market or handle

a substantial quantity of lamb or lamb products; and

(2) A primary purpose of the organization is in the production or marketing of lamb or lamb products.

**§ 1280.207 Term of office.**

(a) The members of the Board shall serve for a term of 3 years, except that the members appointed to the initial Board shall serve proportionately for terms of 1-year, 2-years, and 3-years.

(b) No member may serve more than two consecutive 3-year terms.

(c) Each member shall continue to serve until a successor is appointed by the Secretary and has accepted the position.

**§ 1280.208 Compensation.**

Board members shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Board.

**§ 1280.209 Removal.**

If the Secretary determines that any person appointed under this part fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Secretary shall remove the person 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 service would be detrimental to the purposes of the Act.

**§ 1280.210 Powers and duties of the Board.**

The Board shall have the following powers and duties:

(a) To administer this subpart in accordance with its terms and provisions;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet not less than annually, organize, and select from among the members of the Board a Chairperson, Vice Chairperson, Secretary/Treasurer, other officers, and committees and subcommittees, as the Board determines to be appropriate;

(d) To prepare and submit for the approval of the Secretary, fiscal year budgets in accordance with § 1280.212.

(e) To employ persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties, and to determine the compensation and specify the duties of the persons;

(f) To develop and submit plans and projects to the Secretary for the

Secretary's approval, and to enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information (including producer information), or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and make such other reports available as the Board or the Secretary considers relevant. Any contract or agreement shall provide that:

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

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and,

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(g) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(h) To recommend to the Secretary such amendments to the Order as the Board considers appropriate;

(i) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(j) To cause its books to be audited by a competent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(k) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board to the Secretary;

(l) To furnish to the Secretary any information or records that the Secretary may request;

(m) To work to achieve an effective, continuous, and coordinated program of promotion, research, and information (including producer information), designed to strengthen the lamb industry's position in the marketplace; maintain and expand existing markets and uses for lamb and lamb products; and to carry out programs, plans, and projects designed to provide maximum benefits to the lamb industry;

(n) To provide not less than annually a report to producers, feeders and first handlers, accounting for the funds expended by the Board, and describing programs implemented under the Act; and to make such report available to the public upon request;

(o) To invest funds in accordance with § 1280.213.

**§ 1280.211 Prohibited activities.**

The Board may not engage in, and shall prohibit the employees and agents of the lamb industry from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, other than recommending to the Secretary amendments to the Order; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the order, that may be false or disparaging to another agricultural commodity.

**Expenses**

**§ 1280.212 Budget and expenses.**

(a) The Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering, this subpart. The budget shall be submitted before the beginning of each fiscal year, and as frequently as may be necessary thereafter.

(b) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another.

(c) The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be

incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(d) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Board.

(e) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

(f) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(g) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal year an amount that exceeds 10 percent of the assessments and other income received by the Board for that fiscal year, except for the initial fiscal year. Reimbursements to the Secretary required under paragraph (f) of this section are excluded from this limitation on spending.

#### **§ 1280.213 Investment of funds.**

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a financial institution that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States. Income from any such investment may be used for any purpose for which the invested funds may be used.

#### **§ 1280.214 Refund escrow accounts.**

(a) The Board shall establish an interest bearing escrow account with a financial institution which is a member of the Federal Reserve System and will deposit into such account an amount equal to the product obtained by multiplying:

(1) The total amount of assessments collected by the Board during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum; by

(2) Ten percent (10 percent)

(b) The Board shall pay refunds of assessments to eligible persons requesting refunds during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum in the manner specified in paragraph (c) of this section.

(c) If the amount deposited in the escrow account is less than the amount of refunds requested, the Board shall prorate the amount deposited in such account among all eligible persons who request a refund of assessments paid no later than the date the required referendum results are announced by the Secretary.

#### **§ 1280.215 Refunds.**

Any producer, seedstock producer, feeder, first handler, or exporter from whom an assessment is collected and remitted to the Board, or who pays an assessment directly to the Board, under authority of the Act and this subpart through the announcement of the results of the required referendum, and who is not in favor of supporting the promotion and research program as provided for in this subpart, shall have the right to receive from the Board a refund of such assessment, or a pro rata share thereof, upon submission of proof satisfactory to the Board that the producer, seedstock producer, feeder, first handler, or exporter paid the assessment for which refund is sought. Any such demand shall be made by such producer, seedstock producer, feeder, first handler, or exporter in accordance with the provisions of this subpart and in a manner consistent with regulations recommended by the Board and prescribed by the Secretary.

#### **§ 1280.216 Procedure for obtaining a refund.**

Each producer, seedstock producer, feeder, first handler, or exporter who pays an assessment pursuant to the Act and this subpart during the period beginning on the effective date of the Order and ending on the date the required referendum results are announced may obtain a refund of such assessment only by following the procedures prescribed in this section and any regulations recommended by the Board and prescribed by the Secretary.

(a) *Application form.* A producer, seedstock producer feeder, first handler, or exporter shall obtain a Board-approved refund application form from the Board. Such form may be obtained by written request to the Board and the request shall bear the producer's, seedstock producer's, feeder's, first handler's, or exporter's signature or properly witnessed mark.

(b) *Submission of refund application to Board.* Any producer, seedstock producer, feeder, first handler, or exporter requesting a refund shall submit an application on the prescribed form to the Board within 60 days from the date the assessments were paid by such producer, seedstock producer, feeder, first handler, or exporter but no later than the date the results of the required referendum are announced by the Secretary. The refund application shall show:

(1) The producer's, seedstock producer's, feeder's, first handler's, or exporter's name and address;

(2) Name and address of the person who collected applicant's assessment;

(3) Number of head of lambs, weight of lambs, or its equivalent, on which a refund is requested;

(4) Total amount of refund requested;

(5) Date or inclusive dates on which assessments were paid;

(6) Certification that the producer, seedstock producer, feeder, first handler, or exporter did not collect the assessment from another producer, seedstock producer, feeder, first handler; or exporter or documentation of assessments collected from others; and

(7) The producer's, seedstock producer's, feeder's, first handler's, or exporter's signature or properly witnessed mark.

(c) *Proof of payment of assessments.* The documentation provided pursuant to § 1280.225(b) to the producer, seedstock producer, feeder, first handler, or exporter by the person responsible for collecting an assessment pursuant to this subpart, or a copy thereof, or such other evidence deemed satisfactory to the Board, shall accompany the producer's, seedstock producer's, feeder's, first handler's, or exporter's refund application.

(d) *Payment of refunds.* The Board shall initiate payment of refund requests, or pay a pro rata share thereof, within 90 days of the date the results of the required referendum are released by the Secretary. Refunds shall be paid in a manner consistent with § 1280.214.

**Assessments****§ 1280.217 Lamb purchases.**

(a) Except as prescribed by regulations approved by the Secretary, each first handler, or exporter making payment to a producer, seedstock producer, or feeder for lambs purchased from such producer, seedstock producer, or feeder shall collect an assessment from the producer, seedstock producer, or feeder. Each producer, seedstock producer, or feeder shall pay such assessment to the first handler or exporter, at the rate of one-half cent (\$.005) per pound of live lambs sold.

(b) Except as otherwise specified in this subpart, a person shall not be considered a producer, seedstock producer, or feeder within the meaning of this subpart if:

(1) The person's only share in the proceeds of a sale of lambs is a sales commission, handling fee, or other service fee; or

(2) The person:

(i) Acquired ownership of the lambs to facilitate the transfer of ownership of such lambs from the seller to a third party,

(ii) Resold such lambs no later than 10 days from the date on which the person acquired ownership, and

(iii) Certified, as required by regulations recommended by the Board and prescribed by the Secretary, that the requirements of this provision have been satisfied.

(c) Each person processing or causing to be processed lambs or lamb products of that person's own production and marketing such lambs or lamb products, shall pay an assessment on such lambs or lamb products on the live weight of the lamb at the time of slaughter at the rate established in paragraph (e) of this section. In addition, pursuant to § 1280.108, such individual would be considered a first handler and would be required by § 1280.219 to pay an additional assessment of \$.30 per head. As the first handler, the individual must remit the total amount of assessment to the Board.

(d) A person who is a market agency; i.e. commission merchant, auction market, or livestock market in the business of receiving lambs for sale or commission for or on behalf of a producer, seedstock producer, or feeder shall collect an assessment from the producer, seedstock producer, or feeder and shall pass the collected assessments on to the subsequent purchaser pursuant to this subpart and regulations recommended by the Board and prescribed by the Secretary.

(e) *Rate.* Except as otherwise provided, the rate of assessment shall be

one-half of a cent (\$.005 per pound) per pound on all live lambs sold. The rate of assessment may be raised or lowered no more than twenty-hundredths of a cent (\$.002) in any one year. The Board may recommend any change to the Department. Prior to a change in the assessment rate, the Department will provide notice by publishing in the **Federal Register** any proposed changes with interested parties allowed to provide comment.

(f) The collection of assessments pursuant to § 1280.217, § 1280.218, and § 1280.219 shall begin with respect to lambs purchased, or lambs or lamb products marketed on or after the effective date established by the Secretary and shall continue until terminated or suspended by the Secretary.

(g) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments and invest them on behalf of the Board, and shall pay such assessments and any interest earned to the Board when it is formed. The Secretary shall have the authority to promulgate rules and regulations concerning assessments and the collection of assessments, if the Board is not in place or is otherwise unable to develop such rules and regulations.

(h) Payment remitted pursuant to this subpart shall be in the form of a negotiable instrument made payable to the Board. Such remittances and the reports specified in § 1280.223 and § 1280.225 shall be mailed to the location designated by the Board.

**§ 1280.218 Exporter.**

Each person exporting live lambs shall remit to the Board an assessment on such lambs at the time of export at the rate established in § 1280.217(e). An exporter directly exporting his or her own lambs shall remit an assessment to the Board at the rate established in § 1280.217(e).

**§ 1280.219 First handlers.**

Each first handler, in addition to remitting the assessment collected pursuant to § 1280.217, shall pay an assessment equal to thirty cents (\$.30) per head of lambs purchased by the first handler for slaughter or slaughtered by such first handler pursuant to a custom slaughter arrangement. The rates of assessment for first handlers shall be increased or decreased proportionately if the assessment paid by producers, seedstock producers, and feeders is increased or decreased. Such assessment shall be remitted with the

assessments collected pursuant to § 1280.217.

**§ 1280.220 Collections.**

(a) Each first handler and each exporter responsible for the collection of assessments under this subpart shall remit assessments to the Board by the 15th day of the month following the month in which the lambs were purchased for slaughter or export, as required by regulations recommended by the Board and prescribed by the Secretary, has provided otherwise; or

(b) If a first handler marketed lambs or lamb products directly to consumers, assessments shall be remitted to the Board by the 15th day of the month following the month in which the lambs or lamb products were marketed, as required by regulations recommended by the Board and prescribed by the Secretary, has provided otherwise.

(c) *Late payment charges.* Any unpaid assessments due to the Board pursuant to § 1280.217 shall be increased 2 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this paragraph, any assessment determined at a date later than the date prescribed by this subpart, because of a person's failure to timely submit a report to the Board, shall be considered to have been payable by the date it would have been due if the report had been timely filed. 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.

(d) Persons failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures.

**§ 1280.221 Prohibition on use of funds.**

No funds collected by the Board under this subpart shall be used to undertake any action for the purpose of influencing legislation or governmental action or policy, other than recommending to the Secretary amendments to this subpart. A plan or project conducted pursuant to this title shall not make false or misleading claims on behalf of lamb or lamb products or disparage a competing product.

**Reports, Books, and Records****§ 1280.222 Books and Records of Board.**

The Board shall:

(a) Maintain such books and records, which shall be made available to the Secretary for inspection and audit, as the Secretary may prescribe,

(b) Prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe, and

(c) Account for the receipt and disbursement of all funds entrusted to it. The Board shall cause its books and records to be audited by an independent auditor at the end of each fiscal year, and a report of such audit to be submitted to the Secretary.

**§ 1280.223 Reports.**

Each first handler required to remit assessments to the Board for live lambs pursuant to § 1280.217, each first handler marketing lamb products of that person's own production, and each exporter of lambs, shall report to the Board information pursuant to regulations recommended by the Board and prescribed by the Secretary. Such information may include but is not limited to the following:

(a) The number of lambs purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, the total weight in pounds, and the dates of such transactions;

(b) The number of lambs exported; the total weight in pounds of lambs exported;

(c) The amount of assessment remitted;

(d) The basis; if necessary, to show why the remittance is less than the total weight in pounds of lamb multiplied by the assessment rate;

(e) The date any assessment was paid.

**§ 1280.224 Periodic evaluation.**

Pursuant to the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7401), the Board shall, not less often than every 5 years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

**§ 1280.225 Books and records of persons.**

(a) Each first handler, exporter of lambs, and market agency shall maintain and make available for inspection such books and records as may be required by regulations recommended by the Board and prescribed by the Secretary, including records necessary to verify any required reports. Such records shall be

maintained for at least 2 years beyond the fiscal period of their applicability.

(b) Document evidencing payment of assessments. Each person, including first handlers, exporters and market agencies, responsible for collecting an assessment paid pursuant to this subpart is required to give the person from whom the assessment was collected, written evidence of payment of the assessments paid pursuant to this subpart. Such written evidence serving as a receipt shall include, but not be limited to, the following information:

(1) Name and address of the person collecting the assessment.

(2) Name of person who paid assessment.

(3) Number of head of lamb sold.

(4) Total weight in pounds of lamb sold.

(5) Total assessments paid by the producer, seedstock producer, or feeder.

(6) Date of sale.

(7) Such other information as the Board, with the approval of the Secretary, may require.

**§ 1280.226 Use of information.**

Information from records or reports required pursuant to this subpart shall be made available to the Secretary as is appropriate to the administration or enforcement of the Act, subpart or any regulation issued under the Act. In addition, the Secretary may authorize the use, under this part, of information regarding person paying producers, seedstock producers, feeders, first handlers, or exporters that is accumulated under laws or regulations other than the Act or regulations issued under the Act.

**§ 1280.227 Confidentiality.**

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, producers, seedstock producers, feeders, exporters, or first handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the

Secretary or any officer of the United States is a party. Nothing in this section shall be deemed to prohibit:

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

(b) The publication, by direction of the Secretary, of the name of any person violating this subpart, together with a statement of the particular provisions of this subpart violated by such person.

**Miscellaneous**

**§ 1280.228 Right of the Secretary.**

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

**§ 1280.229 Personal liability.**

No member or employee of the Board shall be held personally responsible, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

**§ 1280.230 Separability.**

If any provision of the subpart is declared invalid or the applicability thereof to any person or circumstance 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.

**§ 1280.231 Patents, copyrights, inventions, product formulations, and publications.**

(a) Any patents, copyrights, inventions or publications developed through the use of funds collected by the Board under the provisions of this subpart shall be the property of the U.S. 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 publication, inure to the benefit of the Board. Upon termination of this subpart, § 1280.235 shall apply to determine the disposition of all such property.

(b) Should patents, copyrights, inventions or publications be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions or

publications shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, invention or publication in a manner consistent with paragraph (a) of this section.

#### § 1280.232 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested persons affected by the provisions of the Act, including the Secretary.

#### § 1280.233 Referenda.

(a) *Required referendum.* For the purpose of ascertaining whether the persons subject to this part favor the continuation, suspension, or termination of this part, the Secretary shall conduct a referendum among persons subject to assessments under § 1280.217, § 1280.218, and § 1280.219 who, during a representative period determined by the Secretary, have engaged in the production, feeding, handling, or slaughter of lamb; or the exportation of lamb.

(1) *Time for referendum.* The referendum shall be conducted not later than 3 years after assessments first begin under this part.

(2) *Approval of part.* This part may be approved in a referendum by a majority of those persons voting for approval who also represent a majority of the volume of lamb produced, fed, slaughtered, handled, and exported.

(b) *Subsequent referenda.* The Secretary shall conduct a subsequent referendum:

(1) Not later than 7 years after assessments first begin under this part;

(2) At the request of the Board established pursuant to § 1280.201; or

(3) At the request of 10 percent or more of the lamb producers, seedstock producers, feeders, first handlers, and exporters eligible to vote to determine if the persons favor the continuation, suspension, or termination of this part.

(c) *Other referenda.* The Secretary may conduct a referendum at any time to determine whether the continuation, suspension or termination of this part or a provision of this part is favored by lamb producers, seedstock producers, feeders, first handlers, and exporters eligible to vote.

(d) *Costs of referenda.* The Board shall reimburse the Secretary for any expenses incurred by the Secretary to conduct referenda.

(e) *Manner of conducting referenda.* A referendum conducted under this section with respect to this part shall be

conducted in the manner determined by the Secretary to be appropriate.

(1) *Voting.* Eligible voters may vote by mail ballot in the referendum or in person if so prescribed by the Secretary.

(2) *Notice.* Not later than 30 days before a referendum is conducted under this section with respect to this part, the Secretary shall notify the eligible voters, in such manner as determined by the Secretary, of the period during which voting in the referendum will occur. The notice shall explain any registration and voting procedures established under this part.

#### § 1280.234 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that this part, subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act,

(b) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

#### § 1280.235 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend to the Secretary not more than five of its members 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 funds and property owned, in possession of or under control of the Board, including claims for any funds unpaid 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 contracts or agreements entered into pursuant to this subpart;

(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 person as the Secretary may direct; and

(4) Upon the direction of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims

vested in the Board or the same obligations as imposed upon the Board and the trustees.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations as imposed upon the Board and the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Department to be utilized, to the extent practicable, in the interest of continuing one or more of the lamb research or information programs hitherto authorized.

#### § 1280.236 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued thereunder, 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 thereafter arise in connection with any provision of this subpart or any such rule or regulation issued thereunder;

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

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

#### § 1280.237 Rules and Regulations.

The Secretary may prescribe such rules and regulations as may be necessary to effectively carry out the provisions of this subpart.

#### § 1280.238 OMB Control Numbers.

The control number for the information requirements assigned by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is 0581-0198, except that the OMB control number for the nominee background form is 0505-0001.

#### Subparts B-E—[Reserved]

Dated: April 5, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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