

## Agricultural Marketing Service, USDA

§ 1280.110

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### 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.

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**§ 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.

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### § 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

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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

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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;

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(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 Sec-

retary 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:

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(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),

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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

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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 start-up 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 pur-

pose 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

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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

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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

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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

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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

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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 liq-

uidation 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 [Reserved]

## Subpart C—Rules and Regulations

SOURCE: 67 FR 39253, June 7, 2002, unless otherwise noted.

### § 1280.401 Terms defined.

As used throughout this subpart, unless the context otherwise requires,

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terms shall have the same meaning as the definition of such terms in subpart A of this part.

**§ 1280.402 Assessments.**

(a) *Sharing proceeds of sale.* If more than one producer, feeder, or seedstock producer shares the proceeds received for the lamb or lamb products sold, each such producer, feeder, or seedstock producer is obligated to pay that portion of the assessments that is equivalent to that producer's, feeder's, or seedstock producer's proportionate share of the proceeds.

(b) *Market agencies.* A person who is a market agency; i.e., commission merchant, auction market, or livestock market in the business of receiving lambs or lamb products for sale on commission for or on behalf of a producer, feeder, or seedstock producer, will be required to collect an assessment from the producer, feeder, or seedstock producer and pass the collected assessment on to the subsequent purchaser(s) until remitted by a first handler or exporter responsible for submitting assessments under this part.

(c) *Failure to collect.* Failure of a person to collect the assessment on lambs purchased from a producer, feeder, or seedstock producer shall not relieve the producer, feeder, or seedstock producer of their obligation to pay the assessment and to remit the assessment to the Secretary.

(d) *Death, bankruptcy, receivership or incapacity to act.* In the event of a producer's, feeder's, seedstock producer's, or exporter's death, bankruptcy, receivership or incapacity to act, the representative of such producer's, feeder's, seedstock producer's, or exporter's estate, the person acting on behalf of creditors or other person acting in such person's stead, shall be considered the producer, feeder, or seedstock producer and shall be required to pay an assessment or collect an assessment.

(e) *Remittance of assessments.* (1) Assessments shall be remitted to the Lamb Promotion, Research, and Information Program, c/o the Secretary at USDA, 23029 Network Place, Chicago, Illinois 60673-1230, with a "Monthly Remittance Report" form LS-81 not later than the 15th day of the following month in which lambs or lamb prod-

ucts were purchased for slaughter or export, or marketed, if a first handler markets lambs or lamb products directly to consumers, in order to avoid late payment charges.

(2) In cases where a producer or feeder sells lambs as part of a custom slaughter operation, the producer or feeder shall be responsible for remitting the assessments pursuant to §1280.219.

(3) 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 shall be responsible for remitting the assessments pursuant to §1280.217(c).

(4) 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. Any assessment received at a date later than the date prescribed by this part, because of a person's failure to submit a timely report to the Secretary, shall be considered to have been payable by the date it would have been due if the report had been filed in a timely manner. The timeliness of a payment to the Secretary shall be based on the applicable postmark date or the date actually received by the Secretary, whichever is earlier.

(5) Weekends and holidays. If the 15th day of the month falls on a Saturday, Sunday, or a federally recognized holiday then the required reports and assessment will be due the next business day in order to avoid late payment charges.

(f) *Non-producer status for certain transactions.* (1) Each person seeking non-producer status pursuant to §1280.217 shall provide the person remitting the assessment a Statement of Certification of Non-Producer Status form (LS-78).

(2) A copy of the Statement of Certification of Non-Producer Status shall be forwarded by the person collecting the assessment to the Secretary.

**§ 1280.403 Refunds.**

(a) *Procedure for obtaining a refund.* Any producer, seedstock producer, feeder, first handler, or exporter from whom an assessment is collected and remitted to the Secretary, or who pays an assessment directly to the Secretary, under the authority of the Act and the Order through the announcement of the results of the required referendum, shall have a right to receive a refund of such assessment, or pro rata share thereof, upon submission of proof satisfactory that such person paid the assessment for which the refund is sought. Any such demand shall be made in accordance with the provision of the Order and this subpart.

(b) *Refund application form.* A producer shall obtain an approved application from the Secretary. Such form may be obtained by written request to the Lamb Promotion, Research, and Information Program, c/o the Secretary at USDA, P.O. Box 23198, Washington, DC 20026-3198.

(c) *Submission of refund application to the Secretary.* Any producer, seedstock producer, feeder, first handler, or exporter requesting a refund shall submit an application on the prescribed form to the Secretary 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.

(d) *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 the Order and this subpart or such other evidence deemed satisfactory to the Secretary, shall accompany the producer's, seedstock producer's, feeder's, first handler's, or exporter's refund application.

(e) *Payment of refunds.* Refunds will be paid pursuant to §1280.216(d).

**§ 1280.404 Reporting.**

(a) Each first handler required to submit assessments for live lambs pursuant to §1280.217, each first handler marketing lamb products of that person's own production, and each ex-

porter of lambs, shall report to the Secretary the following information on form LS-81.

(1) 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;

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

(3) The amount of assessment remitted;

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

(5) The date any assessment was paid.

(b) *Reporting periods.* For reports required pursuant to §1280.223, each calendar month shall be a reporting period.

**§ 1280.405 Books and records.**

(a) Each first handler, exporter of lambs, and market agency shall maintain and, during normal business hours, make available for inspection by representatives of the Secretary, such books and records as are necessary to carry out the provisions of this part, including such books and records as are necessary to verify any required reports.

(b) *Documents evidencing payments of assessments.* Each person, including first handlers, exporters, and market agencies, responsible for collecting an assessment paid pursuant to this part is required to give the person from whom the assessment was collected, written evidence of payment of the assessments paid. Such written evidence serving as a receipt shall include 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 lambs 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 Secretary may require.

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### § 1280.406 Exemption.

(a) A producer, seed stock producer, or feeder who produces (including producing by feeding) only products that are eligible to be labeled as 100 percent organic under the National Organic Program (NOP) (7 CFR part 205), except as provided for in paragraph (h) of this section; a handler who handles only products that are eligible to be labeled as 100 percent organic under the NOP; or an exporter who exports only products that are eligible to be labeled as 100 percent organic under the NOP; and who operates under an approved NOP system plan and is not a split operation.

(b) To apply for an exemption under this section, the person shall submit the request to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the person continues to be eligible for the exemption.

(c) The request shall include the following: the person's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the person complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) An exempt producer shall provide a copy of the Certificate of Exemption to each person to whom the producer sells ovine animals or lamb and lamb products. The Certificate of Exemption must accompany the ovine animals through the production chain to the

person responsible for remitting the assessment to the Board.

(f) The person shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(g) The exemption will apply at the first reporting period following the issuance of the exemption.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer, seed stock producer, or feeder from exemption under this section, except that persons producing or feeding both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

[70 FR 2762, Jan. 14, 2005]

### Subpart D [Reserved]

### Subpart E—Procedures To Request a Referendum

#### DEFINITIONS

SOURCE: 69 FR 77572, Dec. 27, 2004, unless otherwise noted.

#### § 1280.601 Terms defined.

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

#### § 1280.602 Administrator, AMS.

*Administrator, AMS*, means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

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## § 1280.613

### § 1280.603 Administrator, FSA.

*Administrator, FSA*, means the Administrator, of the Farm Service Agency, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

### § 1280.604 Eligibility.

*Eligibility* is defined as any person subject to the assessment who during the representative period determined by the Secretary have engaged in the production, feeding, or slaughtering of lambs. Such persons are eligible to participate in the referendum. Those persons whose only share in the proceeds of a sale of lambs is a sales commission, handling fee or other service fee or the person acquired ownership of the lambs to facilitate the transfer of ownership of such lambs from the seller to a third party and resold such lambs no later than 10 days from the date on which the person acquired ownership are not considered are producers, seedstock producers, or feeders and not subject to the assessment. Such persons will not be eligible to participate in the referendum.

### § 1280.605 Farm Service Agency.

*Farm Service Agency* also referred to as "FSA" means the Farm Service Agency of USDA.

### § 1280.606 Farm Service Agency County Committee.

*Farm Service Agency County Committee*, also referred to as "FSA County Committee or COC," means the group of persons within a county who are elected to act as the Farm Service Agency County Committee.

### § 1280.607 Farm Service Agency County Executive Director.

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

### § 1280.608 Farm Service Agency State Committee.

*Farm Service Agency State Committee*, also referred to as "FSA State Committee," means the group of persons within a State who are appointed by the Secretary to act as the Farm Service Agency State Committee.

### § 1280.609 Farm Service Agency State Executive Director.

*Farm Service Agency State Executive Director*, Farm Service Agency State Executive Director, also referred to as "SED," means the person within a State who is appointed by the Secretary to be responsible for the day-to-day operation of the FSA State Office, or the person acting in such capacity.

### § 1280.610 Public notice.

*Public notice* means not later than 30 days before the referendum is conducted, the Secretary shall notify the eligible voters in such manner as determined by the Secretary, of the voting period during which voting in the referendum will occur. The notice shall explain any registration and voting procedures established under §518 of the Act.

### § 1280.611 Representative period.

*Representative period* means the period designated by the Secretary pursuant to §518 of the Act.

### § 1280.612 Volume of production.

(a) For producers and seedstock producers, the term *volume of production* means the total number of live domestic lambs owned and produced during the most recent calendar year.

(b) For feeders, *volume of production* means the total number of lambs owned and fed during the most recent calendar year.

(c) For first handlers, *volume of production* means the total number of lambs slaughtered during the most recent calendar year.

### § 1280.613 Voting period.

The term *voting period* means a 4-week period to be announced by the Secretary for voting the referendum.

## § 1280.620

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### PROCEDURES

#### § 1280.620 General.

A referendum to determine whether eligible persons favor the continuance of this part shall be carried out in accordance with this subpart.

(a) The referendum will be conducted at county FSA offices.

(b) The Secretary shall determine if at least a majority of those persons voting for approval who also represent a majority of the volume of lambs owned and produced; owned and fed; or slaughtered, favor the continuance of this part.

#### § 1280.621 Supervision of the process for conducting a referendum.

The Administrator, AMS, shall be responsible for supervising the process of permitting persons to vote in a referendum in accordance with this subpart.

#### § 1280.622 Eligibility.

(a) Any person subject to the assessment who during the representative period determined by the Secretary has engaged in the production, feeding, or slaughtering of lambs is eligible to participate in the referendum. Those persons whose only share in the proceeds of a sale of lambs is a sales commission, handling fee or other service fee or the person acquired ownership of the lambs to facilitate the transfer of ownership of such lambs from the seller to a third party and resold such lambs no later than 10 days from the date on which the person acquired ownership are not considered are producers, seedstock producers, or feeders and not subject to the assessment. Such persons will not be eligible to participate in the referendum.

(b) *Proxy Registration.* (1) Proxy registration is not authorized, except that an officer or employee of a corporate producer, feeder, seedstock producer, or first handler, or any guardian, administrator, executor, or trustee of a person's estate, or an authorized representative of any eligible producer, feeder, seedstock producer, or first handler entity (other than an individual person), such as a corporation or partnership, may vote on behalf of that entity. Further, an individual cannot

vote on behalf of another individual (*i.e.*, spouse, sharecrop lease, etc.).

(2) Any individual, who votes on behalf of any producer, feeder, seedstock producer, or first handler entity, shall certify that he or she is authorized by such entity to take such action. Upon request of the county FSA office, the person voting may be required to submit adequate evidence of such authority.

(c) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation who engaged in the production, feeding, or slaughtering of lambs during the representative period as a producer, feeder, seedstock producer, or first handler entity shall be entitled to cast only one vote; provided, however, that any individual member of a group who is an eligible person separate from the group may vote separately.

#### § 1280.623 Time and place of the referendum.

(a) The opportunity to vote in the referendum shall be provided during a 4-week period beginning and ending on a date determined by the Secretary. Eligible persons shall have the opportunity to vote following the procedures established in this subpart during the normal business hours of each county FSA office.

(b) Persons can determine the location of county FSA offices by contacting the nearest county FSA office, the State FSA office, or through an online search of FSA's Web site at <http://www.fsa.usda.gov/pas/default.asp>.

(c) Each eligible person shall cast a ballot in the county FSA office where FSA maintains the person's administrative farm records. For eligible persons not participating in FSA programs, the opportunity to vote will be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production, feeding, slaughtering, of lambs in more than one county will vote in the county FSA office where the person does most of his or her business.

**§ 1280.624 Facilities.**

Each county FSA office will provide:

(a) a voting place that is well known and readily accessible to persons in the county and that is equipped and arranged so that each person can complete and submit their ballot in secret without coercion, duress, or interference of any sort whatsoever, and

(b) a holding container of sufficient size so arranged that no ballot or supporting documentation can be read or removed without breaking seals on the container.

**§ 1280.625 Certification and referendum form ballot form.**

Form LS-86 shall be used to vote in the referendum and certify eligibility. Eligible persons will be required to complete a ballot in its entirety, vote "yes" or "no" to continue the program, enter the number of lambs (volume of production) owned and produced; owned and fed; or slaughtered during a representative period and provide documentation such as a sales receipt or remittance form showing that the person voting was engaged in the production, feeding, or slaughtering of lambs during the representative period. The person or authorized representative shall sign the ballot certifying that they or the entity they represent were engaged in the production, feeding, or slaughtering of lambs during the representative period and that the volume of production voted is true and accurate.

**§ 1280.626 Certification and voting procedures.**

(a) Each eligible person shall be provided the opportunity to cast a ballot during the voting period announced by the Secretary.

(1) Each eligible person shall be required to complete form LS-86 in its entirety, sign it, and provide evidence that they were engaged in the production, feeding, or slaughtering of lambs during the representative period. The person must legibly place his or her name and, if applicable, the entity represented, address, county, and telephone number. The person shall sign and certify on form LS-86 that:

(i) The person was engaged in the production, feeding, or slaughtering of lambs during the representative period;

(ii) The person voting on behalf of a corporation or other entity is authorized to do so;

(iii) The person has cast only one vote; and

(iv) The volume of production listed on the ballot is true and accurate.

(2) Only a completed and signed form LS-86 accompanied by supporting documentation showing that the person was engaged in the production, feeding, or slaughter of lambs during the representative period shall be considered a valid vote.

(b) To vote, eligible persons may obtain form LS-86 in-person, by mail, or by facsimile from county FSA offices or through the Internet during the voting period. A completed and signed form LS-86 and supporting documentation, such as a sales receipt or remittance form, must be returned to the appropriate county FSA office where FSA maintains and processes the person's administrative farm records. For a person not participating in FSA programs, the opportunity to vote in a referendum will be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production, feeding, or slaughtering of lambs in more than one county will vote in the county FSA office where the person does most of his or her business. Forms obtained via the Internet will be located at <http://www.ams.usda.gov/lsg/mpb/rp-lamb.htm>.

(c) A completed and signed form LS-86 and the supporting documentation may be returned in-person, by mail, or facsimile to the appropriate county FSA office. Form LS-86 and supporting documentation returned in-person or by facsimile, must be received in the appropriate county FSA office prior to the close of the work day on the final day of the voting period to be considered a valid ballot. Form LS-86 and the accompanying documentation returned by mail must be postmarked no later than midnight of the final day of the voting period and must be received in the county FSA office on the 5th business day following the final day of the voting period.

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(d) Persons who obtain form LS-86 in-person at the appropriate FSA county office may complete and return it the same day along with the supporting documentation.

**§ 1280.627 Canvassing voting ballots.**

(a) Canvassing of form LS-86 shall take place at the county FSA offices on the 6th business day following the final day of the voting period. Such canvassing, acting on behalf of the Administrator, AMS, shall be in the presence of at least two members of the county committee. If two or more of the counties have been combined and are served by one county office, the canvassing of the requests shall be conducted by at least one member of the county committee from each county served by the county office. The FSA State committee or the State Executive Director, if authorized by the State Committee, may designate the County Executive Director (CED) and a county or State FSA office employee to canvass the ballots and report the results instead of two members of the county committee when it is determined that the number of eligible voters is so limited that having two members of the county committee present for this function is impractical, and designate the CED and/or another county or State FSA office employee to canvass requests in any emergency situation precluding at least two members of the county committee from being present to carry out the functions required in this section.

(b) Form LS-86 should be canvassed as follows:

(1) *Number of valid ballots.* A person has been declared eligible by FSA to vote by completing form LS-86 in its entirety, signing it, voting volume of production, and providing supporting documentation that shows the person who cast the ballot during the voting period was engaged in the production, feeding, or slaughtering of lambs during the representative period. Such ballot will be considered a valid ballot.

(2) *Number of ineligible ballots.* If FSA cannot determine that a person is eligible based on the submitted documentation or if the person fails to submit the required supporting documentation, the person shall be determined to be in-

eligible. FSA shall notify ineligible persons in writing as soon as practicable but no later than the 8th business day following the final day of the voting period.

(c) *Appeal.* A person declared to be ineligible by FSA can appeal such decision and provide additional documentation to the FSA county office within 5 business days after the postmark date of the letter of notification of ineligibility. FSA will then make a final decision on the person's eligibility and notify the person of the decision.

(d) *Invalid ballots.* An invalid ballot includes, but is not limited to the following:

(1) Form LS-86 is not signed or all required information has not been provided;

(2) Form LS-86 and supporting documentation returned in-person or by facsimile was not received by close of business on the last business day of the voting period;

(3) Form LS-86 and supporting documentation returned by mail was not postmarked by midnight of the final day of the voting period;

(4) Form LS-86 and supporting documentation returned by mail was not received in the county FSA office by the 5th business day following the final day of the voting period;

(5) Form LS-86 or supporting documentation is mutilated or marked in such a way that any required information on the form is illegible; or

(6) Form LS-86 and supporting documentation not returned to the appropriate county FSA office.

**§ 1280.628 Counting ballots.**

(a) Form LS-86 shall be counted by county FSA offices on the same day as the ballots are canvassed if there are no ineligibility determinations to resolve. For those county FSA offices that do have ineligibility determinations, the requests shall be counted no later than the 14th business day following the final day of the voting period.

(b) Ballots shall be counted as follows:

(1) Number of valid ballots cast;

(2) Number of persons favoring the Order;

(3) Number of persons not favoring the Order;

(4) Volume of production voted favoring the continuation of the Order;

(5) Volume of production voted not favoring the continuation of the Order; and

(6) Number of invalid ballots.

**§ 1280.629 FSA county office report.**

The county FSA office report shall be certified as accurate and complete by the CED or designee, acting on behalf of the Administrator, AMS, as soon as may be reasonably possible, but in no event shall submit no later than 18th business day following the final day of the specified period. Each county FSA office shall transmit the results in its county to the FSA State office. The results in each county may be made available to the public upon notification by the Administrator, FSA, that the final results have been released by the Secretary. A copy of the report shall be posted for 30 calendar days following the date of notification by the Administrator, FSA, in the county FSA office in a conspicuous place accessible to the public. One copy shall be kept on file in the county FSA office for a period of at least 12 months after notification by FSA that the final results have been released by the Secretary.

**§ 1280.630 FSA State office report.**

Each FSA State office shall transmit to the Administrator, FSA, as soon as possible, but in no event later than the 20th business day following the final day of the voting period, a report summarizing the data contained in each of the reports from the county FSA offices. One copy of the State summary shall be filed for a period of not less than 12 months after the results have been released and available for public inspection after the results have been released.

**§ 1280.631 Results of the referendum.**

(a) The Administrator, FSA, shall submit to the Administrator, AMS, the reports from all State FSA offices. The Administrator, AMS, shall tabulate the results of the ballots. USDA will issue an official press release announcing the results of referendum and publish the

same results in the FEDERAL REGISTER. In addition, USDA will post the official results at the following website: <http://www.ams.usda.gov/lsg/mpb/rp-lamb.htm>.

Subsequently, State reports and related papers shall be available for public inspection upon request during normal business hours in the Marketing Programs Branch; Livestock and Seed Program, AMS, USDA, Room 2638-S; STOP 0251; 1400 Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems necessary, a State report or county report shall be reexamined and checked by such persons who may be designated by the Secretary.

**§ 1280.632 Disposition of records.**

Each FSA CED will place in sealed containers marked with the identification of the "Lamb Checkoff Program Referendum," all of the form LS-86's along with the accompanying documentation and county summaries. Such records will be placed in a secure location under the custody of FSA CED for a period of not less than 12 months after the date of notification by the Administrator, FSA, that the final results have been announced by the Secretary. If the county FSA office receives no notice to the contrary from the Administrator, FSA, by the end of the 12 month period as described above, the CED or designee shall destroy the records.

**§ 1280.633 Instructions and forms.**

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

**§ 1280.634 Confidentiality.**

The names of persons voting in the referendum and ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the votes but may not interfere with the process.

**PART 1290—SPECIALTY CROP  
BLOCK GRANT PROGRAM**

Sec.  
1290.1 Purpose and scope.