

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1280

[No. LS-04-06]

#### Lamb Promotion and Research Program: Procedures for the Conduct of a Referendum

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Commodity Promotion, Research, and Information Act of 1996 (Act) authorizes a program of promotion, research, and information to be developed through the promulgation of the Lamb Promotion, Research, and Information Order (Order). The Act requires that the Secretary of Agriculture (Secretary) conduct a referendum among persons subject to assessments who, during a representative period established by the Secretary, have engaged in the production, feeding, or slaughter of lambs. The Act further requires that a referendum be conducted not later than 3 years after assessments first begin to determine whether the Order should be continued. Assessments began on July 1, 2002. This proposed rule establishes procedures the Department of Agriculture (USDA) would use in conducting the required referendum as well as future referendums. Eligible persons would be provided the opportunity to vote during a specified period announced by USDA at the county Farm Service Agency (FSA) office where FSA maintains and processes the person's administrative farm records. For those eligible persons not participating in FSA programs, the opportunity to vote would 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 slaughter of lambs in more than one county would vote in the county FSA office where the

person does most of his or her business. For the program to continue, it must be approved by at least a majority of those persons voting for approval who are engaged in the production, feeding, or slaughter of lambs and who also represent a majority of the volume of lambs produced, fed, or slaughtered.

**DATES:** Written comments must be received by November 4, 2004. Pursuant to the Paperwork Reduction Act of 1995 (PRA), comments on the information collection burden that would result from this proposal must be received by December 14, 2004.

**ADDRESSES:** Send comments to Kenneth R. Payne, Chief; Marketing Programs Branch; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA, Room 2638-S; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC. 20250-0251. Comments may also be sent electronically to

[LambComments@usda.gov](mailto:LambComments@usda.gov), <http://www.regulations.gov>, or by facsimile at 202/720-1125. All comments should reference the docket number LS-04-06, the date, and the page number of this issue of the **Federal Register**. Comments received may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, or via the Internet at <http://www.ams.usda.gov/lsg/mpb/rp-lamb.htm>.

Pursuant to PRA, send comments regarding the accuracy of the burden estimate and ways to minimize the burden. Comments concerning PRA should also be sent to the Desk Officer for Agriculture; Office of Information and Regulatory Affairs; Office of Management and Budget; New Executive Office Building; 725 17th Street, NW., Room 725; Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Payne, Chief, Marketing Programs Branch on 202/720-1115, fax 202/720-1125, or by e-mail at [Kenneth.Payne@usda.gov](mailto:Kenneth.Payne@usda.gov) or Phil Brockman, USDA, FSA, DAFO, on 202/690-8034, fax 202/720-5900, or by e-mail on [Phil.Brockman@usda.gov](mailto:Phil.Brockman@usda.gov).

Eligible voters can determine the location of county FSA offices by contacting (1) the nearest county FSA office, (2) the State FSA office, or (3) through an online search of FSA's Web site at <http://www.fsa.usda.gov/pas/default.asp>. From the options available

on this Web page select "Your local office," click on your State, and click on the map to select a county.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order (E.O.) 12866 for this action.

##### Executive Order 12988

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have a 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 section 519 of the Act, a person subject to the Order may file a petition with USDA 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, USDA 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. Service of process in a proceeding may be made on USDA by delivering a copy of the complaint to USDA. If the court determines that the ruling is not in accordance with the law, the court shall remand the matter to USDA with direction to make such ruling as the court determining to be in accordance with the law or to take further action as, in the opinion of the court the law requires. The pendency of a petition filed or an action commenced shall not be operated as a stay of any action authorized by section 520 of the Act to

be taken to enforce, including any rule, Order, or penalty in effect.

### Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic effect of the proposed rule on small entities. The purpose of RFA is to fit the regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

The Act, which authorizes USDA to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996.

Section 518 of the Act provides three options for determining industry approval or continuation of a new research and promotion program. They are: (1) By a majority of those voting; (2) by a majority of the volume of the agricultural commodity voted in the referendum; or (3) by a majority of those persons voting who also represent a majority of the volume of the agricultural commodity voted in the referendum. In addition, § 518 of the Act provides for referendums 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. As recommended by representatives of the lamb industry, the final Order, which was published in the **Federal Register** on April 11, 2002 (67 FR 17848), provides that USDA conduct a referendum within 3 years after assessments begin and that the continuation of the Order be approved by at least a majority of those persons voting for approval who are engaged in the production, feeding, or slaughter of lambs and who also represent a majority of the volume of lambs produced, fed, or slaughtered.

This proposed rule would establish the procedures USDA would use for the conduct of a nationwide referendum among eligible persons to determine if the Order should be continued. This proposal would add a new subpart that establishes procedures to conduct the initial and future referendum. The new subpart would cover definitions, certification and voting procedures, eligibility, disposition of forms and records, FSA's role, and reporting the results.

There are approximately 67,468 persons engaged in the production, feeding, or slaughtering of lamb who are subject to the program. Most of the lamb producers, seedstock producers, and feeders, 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 service firms 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. This number and size data remains the same as it appeared in the earlier analyses for the Order.

The information collection requirements, as discussed below, are minimal. Obtaining a ballot by mail, in-person, facsimile, or via the Internet and completing it in its entirety would not impose a significant economic burden on participants. Accordingly, the Administrator of AMS has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities.

### Paperwork Reduction Act

In accordance with PRA (44 U.S.C. Chapter 35), this proposed rule announces that AMS is requesting approval from OMB for a new information collection. Once approved, this collection will be merged into 0581-0093.

*Title:* Lamb Promotion, Research, and Information Referendum Ballot.

*OMB Number:* 0581-New.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .03 hours per response.

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

*Estimated Number of Respondents:* 67,486.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 2,025 hours.

*Total Cost:* \$40,492.

*Abstract:* The purpose of this proposed rule is to provide persons subject to the assessment who are engaged in the production, feeding, and slaughtering of lambs the opportunity to vote in a nationwide referendum on the continuation of the Order. Voting in the referendum is voluntary. This proposed rule would require eligible persons to complete a ballot (Form LS-86) in its entirety. Eligible persons subject to the assessment would be required to vote "yes" or "no" to continue the program, vote the number of lambs (volume of production) owned and produced; owned and fed; or slaughtered during a period specified by the Secretary, and provide documentation that shows the person voting engaged in the

production, feeding, or slaughtering of lamb during the representative period determined by the Secretary. The ballot would require the person to sign it certifying that they engaged in the production, feeding, or slaughtering of lambs during a representative period specified by the Secretary and that the volume of production voted is true and accurate to the best of one's knowledge.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of AMS, including whether the information will have practical utility; (2) the accuracy of AMS' estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) 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 of other forms of information technology.

A 60-day period is provided to comment on the information collection burden. Comments should reference OMB No. 0581-NEW and be sent to [lambcomments@usda.gov](mailto:lambcomments@usda.gov). All comments received will be available for public inspection during regular business hours at the same address. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture; Office of Information and Regulatory Affairs; Office of Management and Budget; New Executive Office Building; 725 17th Street, NW., Room 725; Washington, DC 20503.

### Background

The Act (U.S.C. 7411-7425) which became effective on April 4, 1996, authorizes USDA to establish generic programs of promotion, research, and information for agricultural commodities designed to strengthen an industry's position in the marketplace and to maintain and expand existing domestic and foreign markets and uses for agricultural commodities. Pursuant to the Act, a proposed Order on the Lamb Checkoff Program was published in the **Federal Register** on September 21, 2001 (66 FR 48764). The final Order was published in the **Federal Register** on April 11, 2002 (67 FR 17848).

Collection of assessments began on July 1, 2002.

This program is funded primarily by those persons engaged in the production and feeding of lambs in the amount of one-half cent (\$.005) per pound when live lambs are sold. For purposes of this program, the term "lamb" as defined in the Order means, "any ovine animal of any age, including ewes and rams."

First handlers, which means the packer or other person who buys or takes possession of lambs from a producer or feeder for slaughter, including custom slaughter, are assessed an additional \$.30 cents per head purchased for slaughter or slaughtered by such first handler pursuant to a custom slaughter arrangement. Each person who processes or causes to be processed lamb or lamb products of that person's own production and markets the processed products is assessed one-half cent (\$.005) per pound on the live weight at the time of slaughter and is required to pay an additional assessment of \$.30 per head.

Assessment rates may be adjusted in accordance with applicable provisions of the Act and the Order. The Order also requires persons to collect and remit assessments to the Board. Each producer, feeder, or seedstock producer is obligated to pay that portion of the assessment that is equivalent to that producer's, feeder's, or seedstock producer's proportionate share and shall transfer the assessment to the subsequent purchaser. Additionally, a person who is a market agency; *i.e.*, commission merchant, auction market, or broker in the business of receiving such lamb or lamb products for sale on commission for or on behalf of a producer, feeder, or seedstock producer, is required to collect an assessment and transfer the collected assessment on to the subsequent purchaser(s). Such person would not be subject to the assessment and not eligible to participate in the referendum. Any person who processes or causes to be processed lamb or lamb products of that person's own production and markets the processed products will be required to pay an additional assessment and remit the total assessment to the Board. Each first handler who buys or takes possession of lambs from a producer or feeder for slaughter is required to pay an additional assessment and remit the total assessment to the Board.

The Act requires that a referendum to ascertain approval of an Order must be conducted either prior to the Order going into effect or within 3 years after assessments first begin. The industry recommended to USDA that the referendum be conducted no later than

3 years after assessments first begin to determine whether the Order should be continued. Assessments began on July 1, 2002. Thus, USDA is required to conduct a nationwide referendum among persons subject to the assessment by July 1, 2005. The Order would continue if a majority of those persons voting who also represent a majority of the volume of lambs voted in favor of continuing the program. If the continuation of the Order is not approved by eligible persons voting in the referendum, USDA would begin the process of terminating the program.

Eligible persons would 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 specific period and provide documentation showing that they engaged in the production, feeding, or slaughter of lambs during the representative period. The person would sign the ballot certifying that they were engaged in the production, feeding, or slaughtering of lambs during a representative period specified by the Secretary and that the volume of production voted is true and accurate to the best of one's knowledge. To vote volume of production, producers and seedstock producers would enter the total number of live domestic lambs owned and produced during calendar year 2004. Feeders would vote the total number of lambs owned and fed during calendar year 2004. First handlers would vote the total number of lambs slaughtered during calendar year 2004. The volume of production must be determined by the person voting prior to completing the ballot and be verifiable. 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 would be. Such person would not be eligible to participate in the referendum. USDA proposes that the referendum period would be a 4-week period announced by the Secretary and that the representative period would be January 1, 2004, through December 31, 2004. USDA also proposes that the ballots may be cast in person, by facsimile, or by mail-in vote at the appropriate county FSA offices.

Providing participants an opportunity to vote at the county FSA office would give those persons the greatest opportunity to vote in the referendum.

The proposed rule establishes procedures USDA would use in conducting the required referendum as well as future referendums provided under the Act. The proposed rule includes, definitions, eligibility, certification and voting procedures, reporting results, and disposition of the forms and records. FSA would coordinate State and county FSA roles in conducting the referendum by (1) determining producer eligibility, (2) canvassing and counting ballots, and (3) reporting the results. A 20 day comment period is provided for interested persons to comment. This comment period is deemed appropriate in order to conduct a referendum in a timely manner.

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

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Lamb and Lamb products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that title 7, Part 1280 be amended to read as follows:

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

1. The authority citation for 7 CFR Part 1280 continues to read as follows:

**Authority:** 7 U.S.C. 7411–7425.

2. In Part 1280, a new subpart E is added to read as follows:

#### Subpart E—Procedures To Request a Referendum

##### Definitions

##### Sec.

- 1280.601 Terms defined.
- 1280.602 Administrator, AMS.
- 1280.603 Administrator, FSA.
- 1280.604 Eligibility.
- 1280.605 Farm Service Agency.
- 1280.606 Farm Service Agency County Committee.
- 1280.607 Farm Service Agency County Executive Director.
- 1280.608 Farm Service Agency State Committee.
- 1280.609 Farm Service Agency State Executive Director.
- 1280.610 Public notice.
- 1280.611 Representative period.
- 1280.612 Volume of production.
- 1280.613 Voting period.

##### Procedures

- 1280.620 General.
- 1280.621 Supervision of the process for conducting a referendum.
- 1280.622 Eligibility.

- 1280.623 Time and place of the referendum.
- 1280.624 Facilities.
- 1280.625 Certifications and referendum ballot form.
- 1280.626 Certification and procedures.
- 1280.627 Canvassing voting ballots.
- 1280.628 Counting ballots.
- 1280.629 FSA county office report.
- 1280.630 FSA State office report.
- 1280.631 Results of the referendum.
- 1280.632 Disposition of records.
- 1280.633 Instructions and forms.
- 1280.634 Confidentiality.

## Subpart E—Procedures To Request a Referendum

### Definitions

#### § 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.

#### § 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 producers, seedstock producers, or feeders and are not subject to the assessment. Such persons would 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*, also referred to as "SED," means the person employed by the FSA State Committee to execute the policies of the FSA State Committee and 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 section 518 of the Act.

#### § 1280.611 Representative period.

*Representative period* means the period designated by the Secretary pursuant to section 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.

### 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 producers, seedstock producers, or feeders and are not subject to the assessment. Such persons would not be eligible to participate in the referendum.

(b) *Proxy registration*. 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.). 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 would 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 would 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 Certifications and referendum ballot form.**

Form LS-86 shall be used to vote in the referendum and certify eligibility. Eligible persons would 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 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 would vote in the county FSA office where the person does most of his or her business. Forms obtained via the Internet would 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.

(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 ineligible. 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 Web site: <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 in this section, 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.

Dated: October 8, 2004.

**Barry L. Carpenter,**

*Acting Administrator, Agricultural Marketing Service.*

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