

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 784

#### RIN 0560—AG17

#### Lamb Meat Adjustment Assistance Program

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule finalizes an interim rule implementing the Farm Service Agency's (FSA) Lamb Meat Adjustment Assistance Program (LMAAP). The program is designed to help restore purchasing power and enable producers to make significant changes in production practices to adjust to import competition by providing financial assistance to sheep and lamb producers who have recently experienced low prices and poor market conditions. On the basis of comments and suggestions received, FSA is making several changes to the program provisions in the interim rule and is adding other provisions.

**EFFECTIVE DATE:** March 21, 2002.

**FOR FURTHER INFORMATION CONTACT:** Danielle Cooke, (202) 720-1919 or e-mail [danielle\\_cooke@wdc.fsa.usda.gov](mailto:danielle_cooke@wdc.fsa.usda.gov).

#### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866

This final rule is in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget.

#### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

#### Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

#### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any legal action may be brought regarding determinations of this rule, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

#### Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Paperwork Reduction Act of 1995

A notice with request for comments on the information collection was part of the interim rule. No comments were received from the public during the 60-day comment period regarding the information collection. A regular submission of an information collection package was approved by OMB for use through the year 2003 and assigned OMB control number 0560-0205. The amendments to 7 CFR part 784, contained in this rule involve a change in existing information collection requirements that was previously approved by OMB. In accordance with the Paperwork Reduction Act of 1995, FSA has submitted an emergency information collection request to OMB for the approval of a revision to a

currently approved collection as necessary for the proper functioning of the program. A regular information collection package will be submitted to OMB.

#### Discussion of Final Rule

The interim rule published in the **Federal Register** on June 21, 2000 (65 FR 38409), set forth regulations to allow direct payments to provide immediate financial assistance to sheep and lamb producers who have recently experienced low prices and poor market conditions. The background provisions of that rule described, in addition, the statutory underpinnings of the program, those being provisions of the Act of August 24, 1935, as amended. One of those provisions is clause (3) of section 32, which authorizes the Secretary of Agriculture to "reestablish farmers purchasing power in connection with the normal production of any agricultural commodity for domestic consumption." Under the program, eligible producers of sheep and lambs may receive direct payments towards the production segment of the industry to share expenses for productivity improvement projects. In the second and third year, under the original rule direct payments to producers are based on quality incentives that will assist the industry's competitiveness in the marketplace. To enhance the competitiveness of the domestic lamb and sheep industry, the program is extended by this rule through July 2003 and the rule contemplates that an additional \$37.7 million of Fiscal Year 2002 Section 32 funds will be available for the program. Of the \$37.7 million in additional funds, \$26 million will be allocated to the new ewe lamb incentive payment for Year 3 and Year 4, while the remaining funds will go towards continuing feeder lamb and slaughter lamb payments during Year 2, Year 3, and Year 4 of the program.

Comments regarding the provisions of the program were accepted until July 21, 2000. Comments were received from 48 entities or persons, which includes 28 sheep producers and ranchers, 13 agricultural associations, two farm bureaus, two United States Congressmen, one agricultural university, and two Agency employees.

Most of the comments addressed particular provisions of the interim rule. These are discussed below on a section-

by-section basis, along with the changes that have been made to the interim rule. Changes to each section based on the experience of operating the program under the interim rule are also discussed on a section-by-section basis.

### General

Five respondents commented that the program does not benefit the industry and excludes the small farmer. Prior to publishing the interim rule, USDA provided several opportunities for public participation in the rulemaking process through highly publicized meetings. Comments and program proposals were solicited after the President's announcement of the assistance package to assess their needs and obtain regulatory guidance. We believe the interests of small producers have been duly addressed and considered, as all elements of the industry will be able to share in the elements of this program without an increase in payment rates.

#### *Section 784.1 Applicability; Available Payments*

Most of the comments concerned the lack of an incentive or a payment to encourage the purchase or retention of ewe lambs for breeding stock to replenish the lambing inventory. By this rule, FSA, in conjunction with AMS, will add a ewe lamb incentive payment to the program. This will provide incentives for producers to purchase or retain their breeding ewes, expand herds, and increase the available supply of domestic lamb meat. Payments for the new ewe lamb incentive payment program cover purchases back to August 1, 2001, and then continue for two payment years through July 31, 2003. An additional \$26 million is authorized for the ewe lamb incentive payment with a target of \$13 million per year.

Also in this section, slaughter and feeder lamb payments have been extended one year through July 31, 2003. This will enable domestic lamb and sheep producers to compete more effectively in the marketplace. A total of \$10 million has been authorized to make payments available for marketings of eligible feeder and slaughter lambs during Year 4. In addition, \$1.7 million has been allocated to cover the anticipated short fall of funds for marketings of eligible feeder and slaughter lambs during Year 3.

#### *Section 784.3 Definitions*

Three respondents believed the "feeder lamb definition" provided for in section 784.3 should be changed to allow for lambs fed using a high protein diet or other appropriate diet. That

comment was accepted, as the original definition may be too narrow.

As there is a one year extension of the LMAAP, a definition for Year 4 was added. A definition for "ewe lamb" was also added to reflect the expansion of the program.

#### *Section 784.4 Year 1 Time and Method for Application*

Some of the commenters believed that the time periods between the program announcement and the program deadlines were too short, and that the eligibility period should be retroactive from the 1999 marketing season. FSA, however, established the dates of the program to coincide with the dates in the President's announcement of the \$100 million assistance plan to help U.S. sheep and lamb farmers. Therefore, the comment was not adopted and no such changes were made in this final rule.

#### *Section 784.5 Year 1 Eligibility*

There were several public comments received regarding Year 1 payments. Specifically, seven respondents felt the use of a gross annual revenue level was too restrictive and precluded many from qualifying for a payment during Year 1 or a feeder lamb payment during Year 2. FSA, however, established the use of a gross annual revenue of \$2.5 million or less to help ensure that the Federal financial benefits of this rule are distributed to farmers of more modest financial means. Therefore, the comments are not adopted into this final rule.

Although no comments on this issue were received, while operating under the interim rule, FSA decided to establish a deadline date for producers to complete facility improvements. This provision was added to ensure producer timely compliance with eligibility requirements provided in § 784.5(b)(3). Sheep and lamb operations that do not complete the facility improvements by the deadline date will be determined ineligible for benefits and must immediately refund the payment made and with interest.

Three comments were received from the public who felt that farm raised rams for breeding up to yearling age should be eligible to generate a payment. Other suggestions included that to be eligible to generate a ram payment, the ram should show evidence of various traits of above average genetic potential; another suggested that a provision be added for payments for ram semen and embryo purchases. No change was made as the current incentives appear sufficient to accomplish the program purposes and

more directly aimed at the desired result. For the time period covered, the genetic potential of a ram, ewe or lamb was evaluated and payment made through enrolling in the National Sheep Improvement Program (NSIP), or a similar FSA approved program, that evaluates animals in a flock for maternal, growth, and wool traits. We think these guidelines were sufficient, and at this point the ram portion of the program is over.

Two comments received opposed the sheep improvement program payment by stating this payment does not address the entire industry and should be eliminated. Another comment suggested that Government funds should not be used to solicit membership in voluntary programs such as the NSIP. Comments also suggested that the sheep improvement program payment should include payments with respect to a scrapie program.

The NSIP was approved by USDA because of its recognition in the industry, but the rule allowed for other programs to be approved as well. Scrapie programs were not included in the sheep improvement program because funds under the alternative Domestic Lamb Industry Adjustment Assistance Program were specifically appropriated for animal health issues that included scrapie eradication. Further, scrapie eradication programs are not genetically based and would, therefore not qualify as a genetic evaluation program.

Five of the received comments directed concern toward the ineligibility of facility improvements begun and not completed by the end of the sign-up period. One respondent believed that the facility improvement eligibility requirements were too broad, and more specific guidelines were needed. One respondent was concerned that the facility improvement payment was not designed to make a difference because it was geared more towards small producers and not the entire industry. In response to these concerns, policy and procedure was established in this final rule to provide specific guidelines for facility improvements and a deadline date was established to have facility improvements completed beyond the deadline established for producers to apply for program payments.

#### *Section 784.6 Year 1 Rate of Payment and Limitations on Funding*

Three comments were received from the public who believed that the maximum ram payment rate for Year 1 payments should be increased. The payment limitations in Year 1 were

imposed to assure fair distribution of available funds for all eligible producers with the total available funding and we believe were set at appropriate levels to cover the program goals. No changes were made.

#### *Section 784.8 Year 2 and Year 3 Time and Method for Application*

The majority of the comments received were regarding Year 2 and Year 3 eligibility requirements. Four comments indicated that Year 2 and Year 3 payments should be based on actual sales receipts from the market place because the eligibility requirements for payments with respect to slaughter and feeder lambs and the paperwork involved were too complicated and cumbersome. In response to this concern, FSA has revised operating procedure to allow producers to self-certify feeder lambs by fax by faxing the last page of the LMAAP application form to AMS at least two working days prior to a designated 24-hour viewing period. Then USDA agents, based on their availability, would randomly select sheep and lamb operations to verify the claims. Following that, the producer to receive payment would submit to their FSA county office the completed Form FSA-383 and supporting documentation, as proof of the faxed information.

Also, in the final rule, the provision in § 784.5 allowing a payment to a sheep and lamb operation that owned a feeder lamb continuously for 30 days prior to marketing has been changed to require the operation to own the feeder lamb continuously from birth to the time of marketing. The interim rule led to attempted abuse by a few producers who falsified lamb sales records to circumvent the regulation in order to receive multiple payments.

Several comments received with respect to the slaughter lamb carcass requirements in this section suggested that the 55 to 75 pound dressed hot carcass weight requirement be increased to 80 pounds. Other comments suggested that the 55 to 75 pound dressed hot carcass weight should be eliminated, to accommodate northeastern producers. These producers typically do not qualify for a feeder or slaughter lamb payment because they sell to restaurant and ethnic markets where lamb carcasses average 20 to 45 pounds dressed hot carcass weights. Respondents felt that fine wool sheep would not meet the muscling criteria because the fine wool breeds of the northeastern region are slower to develop muscling. Two comments were received that suggested

a gradual phase in of program standards that would allow breeding programs to adjust to a policy that favors breeds suited to meat production rather than wool production. There were also three comments that suggested Yield grade 3 slaughter lamb carcasses be eligible for payment.

USDA uses the standard of a hot carcass weight of 55 to 75 pounds to provide lamb consumers with a more appealing product. This standard also serves to improve profitability by increasing the efficiency of the lamb production cycle and to encourage the production of more consistently palatable and higher yielding lamb products. Lamb processors want larger carcasses because there is less labor involved for the amount of meat that is realized. Additionally, the weight range and yield grade were not changed in the final rule because the industry wants a more uniform carcass that yields a consistent product in size, weight, and appearance. Finally, the concept of plate coverage was considered in making this determination. The food service industry prefers fewer ribs with larger portions when preparing meals from middle meats. Therefore, these comments are not adopted in this final rule.

Seven comments received from the public expressed concerns about AMS certification, particularly whether AMS has the resources to certify to the feeder and slaughter lambs for the qualifying factors. Eleven comments were received suggesting that AMS simplify the certification procedures by allowing USDA inspectors and small USDA processing plants to certify the carcass criteria. Other suggestions included allowing a waiver of slaughter lamb carcass requirements to producers that marketed less than 500 lambs per year and allowing the use of a Statewide average grade score as a proxy for individual slaughter lamb carcass data. Five respondents believed that a provision should be established to allow producers who sell lambs on a live weight basis to be eligible for payments in Year 2 and Year 3. Some comments suggested that the slaughter lamb payments be based on 100 pounds per lamb with a 145 pound cap. The producer would have to produce receipts for the pounds of lambs sold to the packer and receipts for the pounds of lambs purchased from the sheep producer, and the payment would be based on the difference. To address these situations, the Agency will allow slaughter facilities that process less than 50 market lambs per week to certify the slaughter lamb carcass requirements, provided they are approved by AMS

and meet the established guidelines. Otherwise, the rules appear to be appropriate and efficient with respect to the accomplishment of the goals of the program and administrative necessities.

Three respondents felt that slaughter lambs placed on a truck along with those of several other producers for transport to a slaughter facility would be a major problem and that payments should not be based on a producer's pro rata share. In response to this concern, the LMAAP application form has been revised to assist the sellers of slaughter lambs to identify and trace their lambs placed on a commingled truck load and sold to a slaughter facility. Otherwise the slaughter facility could not identify the number of lambs from a particular producer. This form must accompany lambs to the slaughter facility and be presented to the USDA grader for certification and payment. However, these payments will still be based on a pro-rata share.

#### *Section 784.10 Availability of Funds for Year 1 through Year 3*

There were no comments on this section, however, an additional \$1.7 million has been authorized to cover an anticipated shortfall in the \$10 million allocated to FSA for the feeder and slaughter lamb direct payment in Year 3. Payments for eligible slaughter and feeder lambs will continue through July 31, 2003, to further provide those eligible for the payments with an immediate infusion of funds to help pay operating expenses and meet other financial obligations. An additional \$10 million will be provided to extend the direct payments for eligible feeder and slaughter lambs into 2003. In addition, \$26 million is authorized for the new ewe lamb incentive payment during Year 3 and Year 4. These changes will increase the total available funds for the program in the final rule from \$30 million to \$67.7 million and establish a program for Year 4.

#### *Section 784.13 Estates, Trusts, and Minors*

One public comment was received from a surety association regarding the participation of minors in the program and the enforceability of a surety contract with a minor. However, provisions exist that allow a minor who meets the LMAAP program eligibility requirements to participate in the program, provided the applicable program documents are signed by the minor and co-signed by a person determined by the FSA County Committee to be financially responsible.

Section 784.17 was added to provide offset and withholding provisions and

§ 784.18 was added for assignment of payments. Also, minor changes are made throughout this part to improve structure, clarity, and readability. Also, internal agency administrative procedures are removed.

Finally, changes were made in the proration language of the rule to cover possible over-subscription. The rule contemplates that Year 4 payments will be prorated in advance to comply with expected demand and then paid first-come, first-served, until exhausted. Also the rule specifies that monies committed to ewe incentives may be used only for those purposes and that no other program money will be used for those purposes.

The Department of Agriculture plans to evaluate this program's effectiveness through a review of the impact of several key components. The performance measures will include an annual review of the change in the following: (1) U.S. flock size; (2) quality and yield of slaughter lambs; (3) number of feeder lambs qualifying for payments; and (4) number and quality of ewes retained. These evaluations will continue for the duration of the program.

#### List of Subjects in 7 CFR Part 784

Administrative practice and procedure, Direct payments to sheep and lamb operations, Reporting and record keeping requirements.

Accordingly, for the reasons set forth in the preamble, 7 CFR part 784 is revised to read as follows:

#### PART 784—LAMB MEAT ADJUSTMENT ASSISTANCE PROGRAM

- Sec.
- 784.1 Applicability; available payments.
  - 784.2 Administration.
  - 784.3 Definitions.
  - 784.4 Year 1 time and method for application.
  - 784.5 Year 1 eligibility.
  - 784.6 Year 1 rate of payment and limitations on funding.
  - 784.7 Year 2, Year 3, and Year 4 time and method for application.
  - 784.8 Year 2, Year 3, and Year 4 eligibility.
  - 784.9 Year 2, Year 3, and Year 4 rate of payment and limitations on funding.
  - 784.10 Availability of funds for Year 1 through Year 4.
  - 784.11 Appeals.
  - 784.12 Misrepresentation and scheme or device.
  - 784.13 Estates, trusts, and minors.
  - 784.14 Death, incompetency, or disappearance.
  - 784.15 Maintenance and inspection of records.
  - 784.16 Refunds; joint and several liability.
  - 784.17 Offsets and withholdings.
  - 784.18 Assignments.

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

#### § 784.1 Applicability; available payments.

(a) This part establishes the Lamb Meat Adjustment Assistance Program pursuant to Clause (3) of section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c). The purpose of this program is to provide benefits to sheep and lamb operations to reestablish their purchasing power in connection with the normal production of sheep and lambs for domestic consumption and boost the long-term development and growth of sheep and lamb production in the United States.

(b) Under and subject to this part, FSA will provide with respect to sheep and lamb operations: Year 1 payments in which sheep and lamb operations will receive payments for, during the time period encompassing Year 1 as defined in § 784.3, purchasing eligible rams for breeding, enrolling their herd in a sheep improvement program, and for making improvements to their production facilities; Year 2, Year 3, and Year 4 payments for marketings of eligible slaughter lambs or feeder lambs during the period encompassing those time periods; and Year 3 and Year 4 payments for retaining or purchasing ewe lambs for breeding stock to replenish the lamb inventory during the period encompassing those time periods. Unless otherwise determined by the agency in accordance with the provisions of this part, the amount that may be expended under this part shall not exceed \$67.7 million. Claims that exceed that amount will be prorated in accordance with the provisions for proration that are contained in this part.

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

#### § 784.2 Administration.

This part shall be administered by the Farm Service Agency (FSA) under the general direction and supervision of the Administrator, FSA, or his designee and the employees of the Agency.

#### § 784.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Lamb Meat Adjustment Assistance Program established by this part.

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

*Application* means the Lamb Meat Adjustment Assistance Program

Application, Forms FSA-382 and FSA-383.

*Average Choice Confirmation* means a muscling score of that designation assigned in accordance with official USDA standards and procedures.

*Department* means the United States Department of Agriculture.

*Eligible lambs* means feeder lambs and slaughter lambs during Year 2 through Year 4 and also ewe lambs during Year 3 through Year 4.

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

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

*Feeder lamb* means a ewe or wether of less than one year of age that when sold is intended to be further fed a high protein diet or other appropriate diet to reach an acceptable slaughter market weight.

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

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

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

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

*Secretary* means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this part.

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

*Sheep improvement program* means the "National Sheep Improvement Program" operated by the American Sheep Industry Association or other similar program for herd improvement approved by the FSA with respect to payments under this part.

*Slaughter lamb* means a lamb that is sold for immediate slaughter.

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

*USDA Choice, USDA Prime, USDA Yield Grade 2* mean, respectively, the classifications for lamb carcasses so

designated under the Official United States Standards for Grades of Lamb, Yearling, Mutton, and Mutton Carcasses promulgated by the Secretary of Agriculture under the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087; 7 U.S.C. 1621–1627) and related authorities.

*Year 1* means the period of time beginning July 22, 1999, and ending September 30, 2000.

*Year 2* means the period of time beginning August 1, 2000, and ending July 31, 2001.

*Year 3* means the period of time beginning August 1, 2001, and ending July 31, 2002.

*Year 4* means the period of time beginning August 1, 2002, and ending July 31, 2003.

**§ 784.4 Year 1 time and method for application.**

(a) A request for Year 1 benefits under this part must be submitted on a Lamb Meat Adjustment Assistance Program Payment Application. The form may be obtained from and must be submitted to the FSA county office serving the county where the sheep and lamb operation is located. The completed form must be received by the FSA county office by the close of business on October 13, 2000. Applications not received by the close of business on October 13, 2000, will be returned as not having been timely filed and the sheep and lamb operation filing the application will not be eligible for benefits under this program.

(b) The sheep and lamb operation requesting Year 1 benefits under this part must certify to the accuracy of the information provided in their application for benefits. All information provided is subject to verification by FSA. Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it, program benefits will not be approved. Providing a false certification may result in additional civil and criminal sanctions.

(c) Notwithstanding any other provisions of this section, payments will not be made under this section for the acquisition of rams to the extent that any such purchase, at any time during Year 1, created, or help create, a ratio of rams to ewes for the operation that was less than 1 ram to 15 ewes. However, the limitation on payments provided for in the preceding sentence shall not apply to the extent that the operation establishes to the satisfaction of the FSA

County Office Committee that a lower ratio of rams to ewes is customary for the operation for breeding purposes.

**§ 784.5 Year 1 eligibility.**

(a) To be eligible to receive the Year 1 payments under this part, as described in § 784.1, at the rates provided in § 784.6, a sheep and lamb operation must:

(1) Be engaged in the business of producing and marketing agricultural products at the time of filing the application;

(2) Have in 1999 gross annual revenue of \$2.5 million or less; and

(3) During Year 1,  
(i) Purchased rams for breeding purposes within that operation, provided that such rams must have been at least 90 days of age when purchased and must have been, or will be, maintained by the operation for at least 90 days continuously after the date of purchase; or

(ii) Enrolled sheep in an eligible sheep improvement program; or

(iii) Made sheep and lamb operation facility improvements with respect to their operation.

(b) To be eligible for payments for facility improvements made under paragraph (a)(3)(iii) of this section, the sheep and lamb operation must do the following:

(1) Submit supporting documentation of the cost of the improvements made to the facility during program Year 1. Supporting documentation must be dated during Year 1. Materials purchased prior to Year 1 are ineligible.

(2) Use facility improvements for sheep and lamb production activities continuously for at least the next three consecutive years, and

(3) Must complete the facility improvement by a date determined by the Administrator of FSA, or his designee. The Deputy Administrator for Farm Programs, FSA may authorize State and county committees to waive or modify the facility improvement completion date in cases where timeliness or failure to meet such other requirements does not adversely affect the operation of the program.

(c) Upon a failure to maintain the facility for the full three years or complete the facility improvement by the established deadline, the operation must refund the Year 1 facility payment immediately plus interest at the rate of interest determined by the Agency, from the date FSA made such benefits available to the date of repayment.

(d) With respect to payments made for activities addressed in paragraph (a)(3)(i) of this section, upon any failure to maintain a ram for the full required

90-day period after payment, unless the 90-day period referred to in paragraph (a)(3)(i) of this section has already expired, the operation must immediately refund the payment plus interest at a rate determined by the Agency.

**§ 784.6 Year 1 rate of payment and limitations on funding.**

Subject to the availability of funds and to the proration rules of § 784.10, Year 1 payments for qualifying operations shall be at the following rates:

(a) Up to \$100 for each eligible ram purchased, with a maximum of \$2,500 per sheep and lamb operation;

(b) \$.50 for each qualifying sheep enrolled in a qualifying sheep improvement program, up to \$500 per sheep and lamb operation; plus

(c) 20% of the cost of the qualifying facility improvements up to \$2,500 per sheep and lamb operation.

**§ 784.7 Year 2, Year 3, and Year 4 time and method for application.**

(a) A request for Year 2, Year 3, and Year 4 benefits under this part must be submitted on a completed Lamb Meat Adjustment Assistance Program Payment Application. The application must be submitted to the FSA county office serving the county where the sheep and lamb operation is located but, in any case, must be received by the FSA county office by the close of business on August 15, 2001, if applying for Year 2 benefits, by the close of business on August 15, 2002, if applying for Year 3 benefits, and by the close of business August 15, 2003, if applying for Year 4 benefits. The certification section of the application must be completed prior to submission. Applications not received by the respective deadlines will be rejected and returned.

(b) The sheep and lamb operation requesting benefits under this part must certify to the accuracy of the information provided in their application for benefits. All information provided is subject to verification by FSA. Refusal to allow any agency of the Department of Agriculture to verify any information provided will result in rejection of the application or an obligation to return payments. Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

**§ 784.8 Year 2, Year 3, Year 4 eligibility.**

(a) Subject to the availability of funds, Year 2, Year 3, and Year 4 payments will, as described to in § 784.1, be made for eligible marketings of slaughter lambs. Payments for slaughter lambs can be received by an operation at the rates described in § 784.9 for those eligible lambs slaughtered in Year 2, Year 3, and Year 4 if the lambs were owned continuously for 30 days prior to the marketing for slaughter and if the carcass produced meets the criteria set out in paragraph (b) of this section. Other criteria, as set out in this part, may also apply as a condition for, or limitation on, payment. See paragraphs (d) and (g) of this section for feeder lamb and purchased or retained ewe lamb payment eligibility.

(b) In order for a marketing of a slaughter lamb to qualify for payment under paragraph (a) of this section, the carcass produced by the slaughter must meet and be certified by an AMS agent to meet the following criteria:

(1) Meet the requirements of USDA Quality Grade Choice or Prime for lamb carcasses;

(2) Meet the requirements of USDA Yield Grade 2;

(3) Have a muscling confirmation score of "Average Choice" or better; and

(4) Have a 55–75 pound dressed hot carcass weight.

(c) Slaughter facilities that process less than 50 market lambs per week on a yearly basis can request approval from AMS to certify the slaughter lamb carcass requirements according to paragraph (b) of this section. To obtain approval from AMS, the slaughter facility must submit a written request for AMS approval to the address provided by FSA.

(d) Eligible slaughter lambs commingled on a pooled load for transport to a slaughter facility must complete the applicable information on the LMAAP application form. Producers with lambs on these pooled loads can receive a pro-rata portion of payment for eligible slaughter lambs that meet the criteria for payment according to paragraph (b) of this section. The LMAAP application must accompany lambs to the slaughter facility and be presented to the USDA grader for certification. The seller must comply with all other FSA guidelines to be eligible for such benefits for this program.

(e) Subject to the availability of funds, sheep and lamb operations may be eligible for the Year 2, Year 3, and Year 4 feeder lamb payments, as specified in § 784.9, if:

(1) The operation had gross sales of no more than \$2.5 million in the year

preceding the year for which payment is requested; and

(2) The feeder lambs sold were owned by the operation from birth to the time of marketing and, when marketed, were certified by AMS, as thick-muscled and large-framed.

(f) An eligible sheep and lamb operation can self-certify to the eligibility criteria described in paragraph (e) of this section, if they do the following:

(1) Certify to the number of feeder lambs that meet the criteria in paragraph (e)(2);

(2) Maintain identification with the farm or ranch of origin of the feeder lambs for a 24-hour viewing period to allow AMS agents or their assigned representatives an opportunity to verify qualifying feeder lambs;

(3) Complete and fax page 4 of the LMAAP application to a number provided by FSA or AMS at least 2 workdays prior to a 24-hour period when lambs can be viewed for verification, providing on the form the location and contact person for USDA verification purposes;

(4) Submit an LMAAP Application for payment;

(5) Submit supporting documentation to the local county office to prove that page 4 of the LMAAP application was completed and faxed according to paragraph (f)(3) of this section.

(g) Sheep and lamb operations that elect not to self-certify according to paragraph (f) of this section, can self-certify to the eligibility criteria described in paragraph (e) of this section when lambs lose ownership identification by doing the following:

(1) Provide unique identification for all marketed lambs by:

(i) Requesting program ear tags in writing from USDA (the address is available at any local FSA office); or

(ii) Uniquely identifying or tagging each qualifying self-certified feeder lamb that meets the eligibility requirements clearly described in paragraph (e)(2) of this section before transferring ownership. Alternative methods of identification may be used such as other unique ear tags or paint brands;

(2) Complete and fax page 4 of the LMAAP application to a number provided by FSA including the location of the lambs for 30 days after FAX notification and the type of animal identification;

(3) Submit LMAAP Application to the local county office for payment; and

(4) Submit supporting documentation to the local county office to prove that page 4 of the LMAAP application was

completed and faxed according to paragraph (g)(2).

(5) Applicable FSA program forms, office addresses, and fax number information is available on the internet at [www.sc.egov.usda.gov](http://www.sc.egov.usda.gov).

(h) In order for an eligible sheep and lamb operation to receive a ewe lamb incentive payment, the producer must certify that the ewe lamb, at the time of certification is:

(1) Not older than 18 months of age;

(2) Has not produced an offspring;

(3) Does not possess the following characteristics:

(i) Parrot mouth; or

(ii) foot rot.

(i) In addition, to qualify for ewe lamb incentive payment, the sheep and lamb operation must:

(1) Certify that it will maintain the qualifying ewe lambs in the herd for at least one complete offspring lambing cycle and actually maintain the lambs for that period in accord with that certification.

(2) Upon request by an AMS agent, agree to allow the AMS agent to verify that the ewe lambs meet qualifying characteristics. These qualifying characteristics inter alia, must be certified by an AMS agent as equal or superior to those required for lamb incentive payments, as described in paragraphs (b) and (e) of this section.

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

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

(5) Be in compliance with all requirements relating to Scrapie, as described in 9 CFR part 79; and

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

(k) In addition, to be eligible for Year 2, Year 3, and Year 4 payments, a sheep and lamb operation must submit a timely application during the application period for Year 2, Year 3, and Year 4 benefits and comply with all other terms and conditions of this part or which are contained in the application to be eligible for such benefits.

**§ 784.9 Year 2, Year 3, and Year 4 rate of payment and limitations on funding.**

Subject to the availability of funds, and the proration rules set out in § 784.10, Year 2, Year 3, and Year 4 payments may be made to sheep and lamb operations at the following rates:

(a) \$3 for each qualifying feeder lamb; plus

(b) \$5 for each qualifying slaughter lamb marketed in any covered month except for June or July of the applicable program year, and

(c) \$8 for each qualifying slaughter lamb marketed in June or July of the applicable program year.

(d) \$18 for each qualifying ewe lamb retained or purchased for breeding purposes for Year 3 and Year 4 only.

**§ 784.10 Availability of funds for Year 1 through Year 4.**

(a) Total payments under this part, unless otherwise determined by the FSA, cannot exceed \$67.7 million. At the close of Year 3, FSA will determine if the remaining available funds will be sufficient for program Year 4. In the event that funds should be insufficient to complete the expected payments to eligible producers during program Year 4, then the payment rates for that program year shall be prorated by a national factor so as to reduce the expected payments to be made to the amount available and payment shall be made at those rates until monies are expended. Payments made during a prorated program year shall be made first-come, first-served so long as there are monies available in the manner set for in these regulations. Payments for preceding years will not be affected.

(b) A national factor shall be determined, if necessary for slaughter lamb and feeder lamb payments based on the factoring of the remaining available funds at the conclusion of Year 3 divided by the average number of slaughter and feeder lambs that qualified for benefits during Year 2 and Year 3.

(c) Of the \$67.7 million of total funds under this part, \$26 million is specifically earmarked for the ewe lamb incentive payments, with a target of \$13 million per year for Year 3 and Year 4. Those monies (\$26 million) should be used only for the ewe incentive payments and no other funds shall be used for those payments. A national factor shall be determined, if necessary for ewe lamb payments based on the factoring of the remaining available funds at the conclusion of Year 3 divided by the number of ewe lambs that qualified for ewe lamb payments during Year 3.

(d) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, FSA shall reduce the national factor in such manner as FSA, in its sole discretion, finds fair and reasonable.

**§ 784.11 Appeals.**

Any sheep and lamb operation which is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at parts 11 and 780 of this title or otherwise applicable.

**§ 784.12 Misrepresentation and scheme or device.**

(a) A person or operation shall be ineligible to receive assistance under this program if it is determined by FSA to have:

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

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

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

**§ 784.13 Estates, trusts, and minors.**

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

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

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

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

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

**§ 784.14 Death, incompetency, or disappearance.**

In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person

or persons specified in part 707 of this title may receive such benefits, as determined appropriate by FSA.

**§ 784.15 Maintenance and inspection of records.**

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

(b) At all times during the regular business hours, authorized representatives of USDA shall have access to the premises of the sheep and lamb operation in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Any funds disbursed pursuant to this part to any person or operation who does not comply with the provisions of paragraphs (a) or (b) of this section shall be refunded with interest.

**§ 784.16 Refunds; joint and several liability.**

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

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

(c) Interest shall be applicable to refunds required of any person under this part if FSA determines that payments or other assistance was provided to a person who was not eligible for such assistance. Such interest shall be charged at the rate of interest which the United States Treasury charges the Commodity Credit Corporation for funds, from the date FSA made such benefits available to the



date of repayment or the date interest increases as determined in accordance with applicable regulations. FSA may waive the accrual of interest if FSA determines that the cause of the erroneous determination was not due to any action of the person.

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

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

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

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

#### **§ 784.17 Offsets and withholdings.**

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

#### **§ 784.18 Assignments.**

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

Signed at Washington, DC, on March 20, 2002.

**James R. Little,**

*Administrator, Farm Service Agency.*

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## **SMALL BUSINESS ADMINISTRATION**

### **13 CFR Part 121**

**RIN 3245-AE42**

#### **Small Business Size Regulations; Size Standards for Programs of Other Agencies**

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The Small Business Administration (SBA) is revising the procedural regulations that Federal agencies must follow to obtain approval of the SBA Administrator for establishing size standards for use in their programs. This revision will simplify SBA's regulations by requiring agencies to consult with SBA before

proposing a size standard. It requires them to obtain the SBA Administrator's approval before publishing a final rule.

**DATES:** This rule is effective on April 25, 2002.

**FOR FURTHER INFORMATION CONTACT:** Carl Jordan, Office of Size Standards, at (202) 205-6618.

#### **SUPPLEMENTARY INFORMATION:**

##### **Introduction**

The Small Business Act (sec. 3(a) & (b), 15 U.S.C. 632) (the Act) provides for the establishment of small business size standards. The Act authorizes the Administrator of SBA to "specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of this Act or any other Act" (emphasis added). The Act gives the SBA Administrator exclusive authority to establish small business size standards for all Federal agencies, in the absence of other specific statutory authority. Unless a statute specifies size standards for an agency's program or gives an agency direct authority to establish size standards, the agency must use the applicable size standards established by SBA. However, the Act allows an agency to "prescribe a size standard for categorizing a business concern as a small business concern" (sec. 3(a)(2)(C) of the Act) provided the contemplated size standard meets certain criteria *and* the agency obtains approval of the SBA Administrator.

Currently, SBA's Small Business Size Regulations in 13 CFR 121.902 describe procedures that agencies must follow before they prescribe size standards for their own use. These regulations require an agency, contemplating the use of size standards different from those established by SBA, to obtain the SBA Administrator's approval to do so before it proposes them for comment as part of its rulemaking process. If an agency believes that size standards different from those established by SBA are appropriate for its purposes, it must propose specific size standards, explain why it believes they are appropriate for their purposes and why SBA's size standards are not, and seek public comment on them. The proposed size standards must be specific and must meet the criteria set forth in the Act and SBA's regulations. Before an agency issues a final rule, it must notify SBA of the size standards it is adopting and provide SBA with copies of public comments received on the proposed size standards.

#### **Reasons for the Change in the Regulation**

Based on its experience in evaluating agencies' requests for special size standards, SBA proposed revisions to its Small Business Size Regulations by modifying what information agencies need to provide to SBA and when formal approval is required (65 FR 4176, dated January 26, 2000). SBA explained in the proposed rule that the purpose of the revision is to: (1) Streamline the rulemaking process; (2) eliminate a step in the approval process in cases where an agency contemplates adopting a size standard different from a proposed size standard approved by the SBA's Administrator; (3) give an agency SBA's advisory input before the agency issues its proposed size standard; and (4) allow SBA to consider in its decision-making process the requesting agency's proposed rule, its explanation and justification for the size standards it intends to adopt, copies of the public comments to the proposed size standards, and a draft copy of the agency's intended final rule.

#### **Summary of New Procedures**

This final rule adopts the proposed changes of January 26, 2000. The comments received on the proposed rule generally supported the proposed revisions (see discussion of comments below). The adopted procedures establish a consultation requirement with SBA's Office of Size Standards before publishing a proposed rule and require agencies to obtain the SBA Administrator's formal approval before adopting the size standards in a final rule.

Consultation with SBA's Office of Size Standards must be in writing and take place at least fourteen (14) calendar days before issuing the proposed rule. It must include what size standard the agency is proposing, to what program it will apply, how the agency arrived at the particular size standard, and why SBA's existing size standards do not satisfy the agency's program requirements. This consultation will allow SBA to review the proposed size standards and advise the agency as soon as practicable of issues that could prevent the SBA Administrator's approval, such as those in conflict with the Act or SBA Small Business Size Regulations. The agency will then have the opportunity to address those issues in either the proposed rule or final rule.

Prior to publishing a final rule, the agency must request and obtain the SBA's Administrator's approval to establish its own size standard. The agency must provide SBA with copies of