



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1280

[No.AMS-LS-11-0038]

Lamb Promotion, Research, and Information Order; Amendment to the Order to Raise the Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Lamb Promotion, Research, and Information Order (Order) to increase the assessment rate on all live ovine animals sold from \$0.005 per pound to \$0.007 per pound for producers, feeders, and seedstock producers, and from \$0.30 per head of ovine animals purchased for slaughter to \$0.42 per head for first handlers. The increase is provided for under the Order, which is authorized by the Commodity Promotion, Research, and Information Act of 1996 (Act) (7 U.S.C. 7411-7425). The American Lamb Board (Board), which administers the Order, recommended this action to maintain and expand their promotional, research, advertising, and communications programs.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Emily DeBord, Agricultural Marketing Specialist, Research and Promotion Division, on 202/690-2611, fax 202/720-1125, or by e-mail at Emily.DeBord@ams.usda.gov.

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. The rule is not intended to have retroactive effect and will not affect or preempt any other State or Federal 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 the Secretary of Agriculture (Secretary) 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 may request a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within 2 years after the effective date of the Order,

provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary 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 conducts 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 Secretary's final ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic effect of this action on small entities and has determined that this final rule will not have a significant impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory action to the scale of businesses subject to such action in order that small businesses will not be unduly burdened.

The U.S. Department of Agriculture's (Department) National Agricultural Statistics Service estimated that in 2012 the number of operations in the United States with sheep totaled approximately 79,500. The majority of these operations that are

subject to the Order may be classified as small entities.

The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than \$750,000, and small agricultural service firms (handlers and importers) as those having annual receipts of no more than \$7 million. Under these definitions, the majority of the producers, feeders, seedstock producers, and first handlers that will be affected by this final rule are considered small entities.

Funds collected under the programs are used for promotion, information, research, and advertising of American lamb and for the administration, maintenance, and functioning of the Board. At the current assessment rate of one-half of a cent (\$0.005) per pound on all live lambs sold by producers, feeders, and seedstock producers and thirty cents (\$0.30) per head of lamb purchased by first handlers for slaughter, the program generates about \$1.8 million in annual revenues. The current assessment rate was established in April 11, 2002, when the Order was issued (70 FR 17848). The Order is administered by the Board under Department oversight. According to the Board, additional revenue is required in order to sustain and expand the promotional, research, advertising, and communications programs.

On May 26, 2011, the Board passed a motion to raise the assessment rate as authorized under the Act and Order (7 CFR Part

1280). This final rule is consistent with section 1280.217(e) of the Order, which states that the rate of assessment for producers, seedstock producers, and feeders may be raised or lowered no more than twenty-hundredths of a cent (\$0.002) in any one year. In addition, section 1280.219 states the rate of assessment for first handlers shall be increased or decreased proportionately if the assessment paid by producers, feeders, and seedstock producers is increased or decreased. The current rate producers pay on a per pound basis, \$0.005 per pound, is 16.7 percent of the rate first handlers pay on a per head basis, \$0.30 per head. To keep the same proportionality when producers are assessed a rate of \$0.007 per pound, the first handlers will be assessed a rate of \$0.42 per head. Currently, section 1280.217 of the Order states that the rate of assessment shall be one-half of a cent (\$0.005) per pound on all live lambs sold. Section 1280.219 currently states each first handler, in addition to remitting the assessment collected pursuant to section 1280.217, shall pay an assessment equal to thirty cents (\$0.30) per head of lambs purchased by the first handler for slaughter or slaughtered by such first handler pursuant to a custom slaughter arrangement. This final rule will amend the aforementioned sections.

The Board's most recent return on investment study, *Analyzing the Effectiveness of the Lamb Promotion, Research, and Information Order*, by Oral Capps, Jr. and Gary W. Williams,

showed that for the period 2002 through 2010 the Lamb Checkoff Program continued to enhance the demand for American lamb. The analysis shows that the Board's promotion programs have generated roughly 7.1 to 7.5 additional pounds of total lamb consumption per dollar spent on advertising and promotion and \$37.16 to \$39.34 in additional lamb sales per dollar spent on advertising and promotion. Copies of this study can be obtained from the Board.

Over the last several fiscal years, however, several trends have asserted downward pressure on the Board's continued ability to sustain the industry's recognized high level of return. Domestic lamb production levels have continued to decrease. A growing percentage of domestic lamb is being sold into non-traditional markets and higher costs driven by worldwide inflation have increased the expense of implementing Board programs. The Board's assessment collections have continued to decrease from \$2.8 million in 2003 to \$1.9 million in 2012. Over the past few years the Board's budget has decreased and business costs have increased. The Board has explored ways to maintain effective programs by cutting programs that are not meeting the Board's expectations. The Board believes that marketing and promotions programs should not be reduced any further at a time when it is critical for the industry to protect American lamb's position in retail and foodservice and maintain market share.

The Board states that the proposed assessment rate increase would enable it to maintain, enhance, and expand its efforts to build demand, increase awareness, and create preference for American lamb through targeted advertising, retail promotions, public relations campaigns and media outreach, foodservice programs, consumer events, social marketing, and nutrition education. The Board strongly believes that it is a critical time for the industry to protect their position in retail and foodservice and maintain market share in order for there to be a future for domestic lamb. The Board believes that it is essential to increase the lamb checkoff revenue and get its marketing and promotion budget back to the original budget levels in fiscal years 2003 and 2004 in order to maintain its efforts to promote American lamb and deliver a good return on the industry's investment.

This final rule does not impose additional recordkeeping requirements on producers, feeders, seedstock producers, or first handlers of American lamb. There are no Federal rules that duplicate, overlap, or conflict with this rule. In accordance with OMB regulation (5 CFR Part 1320), which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements have been approved previously under OMB control number 0581-0093. This final rule does not result in a change to the information

collection and recordkeeping requirements previously approved. We have performed this initial RFA regarding the impact of this final amendment to the Order on small entities.

Background and Final Action

Under the Order, which became effective April 11, 2002, the Board administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen the position of, and to develop and expand the markets for, ovine animals and ovine products. This program is currently financed by assessments from producers, feeders, and seedstock producers who pay an assessment of one-half cent (\$0.005) per pound when live ovine animals are sold. First handlers, primarily packers, pay an additional \$0.30 per head on ovine animals purchased for slaughter. Importers are not assessed.

This final rule will increase the assessment rate on all live lambs sold from \$0.005 per pound to \$0.007 per pound for producers, feeders, and seedstock producers and from \$0.30 per head of lamb purchased for slaughter to \$0.42 per head for first handlers. According to the Board, in order to sustain and expand the promotion, research, and communications programs at present levels, the Board contends that additional revenue is required. The assessment rate increase is estimated to generate \$700,000 in new revenue, depending upon production levels.

The Board's budget is based on the amount of assessments

collected on an annual basis. As assessments have continued to decline, the Board's budget has decreased from \$2.8 million in 2003 to \$1.9 million in 2012. As expenses to successfully promote and increase the consumption of American lamb continue to rise, the Board believes it is necessary to amend the Order to increase the rate of assessment.

On May 26, 2011, the Board unanimously approved a motion to request that the Secretary amend sections 1280.217 (e) and 1280.219 of the Order to increase the assessment rate on all live lambs sold from \$0.005 per pound to \$0.007 per pound for producers, feeders, and seedstock producers and from \$0.30 per head of lamb purchased for slaughter to \$0.42 per head for first handlers. The Board has not amended the Order to raise or lower the assessment rate since the inception of the program. The vote to recommend the assessment increase was unanimous.

The Act provides for the creation of, and amendments to, the Order. The Order provides in section 1280.210 that the Board shall have the powers and duties to recommend to the Secretary such amendments to the Order as the Board considers appropriate.

Comments

On June 12, 2012, the Department published in the Federal Register (77 FR 34868) for public comment a proposed rule to amend the Order to increase the assessment rate on all live ovine animals sold from \$0.005 to \$0.007 per pound for producers,

feeders, and seedstock producers, and from \$0.30 to \$0.42 per head for first handlers. Comments were due to the Department by August 13, 2012.

The Department received 121 timely comments related to the proposed rule, of which 94, or 77.7% were in support of the assessment rate increase, and 26, or 21.5%, were opposed to the increase. One comment was neither for nor against the increase, and four comments, which generally reflected the views of those who supported the increase, were received after the closing date. Commenters included producers, feeders, seedstock producers, first handlers, and other interested parties.

Commenters supporting the assessment rate increase pointed to the need to raise sufficient funding for lamb promotions in the face of rising costs. Many noted that the assessment rate had not been increased during the past decade and that the increase would restore marketing funding to earlier levels. Several commenters suggested that the lamb industry would lose share of voice in the market without increased funding. Commenters also noted that the rate increase would offset the decline in lamb inventories across the country. Other commenters pointed out that the lamb industry increasingly was being outspent by competing meats and international competitors in marketing activities.

Commenters who opposed the assessment rate increase cited

the decline of the industry (lamb numbers falling; prices not competitive with imported lamb meat). Many suggested that lamb producers were losing money and could not afford the additional cost. Several commenters based their opposition to the rate increase on their belief that the Lamb Checkoff has not been driving increased lamb consumption. Two commenters noted that the lamb industry is too diversified for the generic checkoff program to be successful.

AMS has carefully considered all comments submitted and is not making any changes to the proposed rule. As has been stated previously in this rulemaking, in the Board's view, it is a critical time for the lamb industry to protect its position in retail and foodservice, and maintain market share, in order for there to be a future for domestic lamb. Therefore, it is essential to increase the lamb checkoff revenue and get its marketing and promotion budget back to the original budget levels in fiscal years 2003 and 2004 in order to maintain the Board's efforts to promote American lamb and deliver a good return on the industry's investment.

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 reasons set forth in the preamble, this final rule

amends 7 CFR part 1280 as follows:

PART 1280--LAMB PROMOTION, RESEARCH, and INFORMATION

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

Authority: 7 U.S.C. 7411-7425 and 7 U.S.C. 7401

2. In §1280.217, paragraph (e) is revised to read as follows:

§1280.217 Lamb purchases.

* * * * *

(e) Rate. Except as otherwise provided, the rate of assessment shall be seven-tenths of a cent (\$0.007) per pound on all live lambs sold. The rate of assessment may be raised or lowered no more than twenty-hundredths of a cent (\$0.002) in any one year. The Board may recommend any change to the Department. Prior to a change in the assessment rate, the Department will provide notice by publishing in the Federal Register any proposed changes with interested parties allowed to provide comment.

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3. Section 1280.219 is revised to read as follows:

§1280.219 First handlers.

Each first handler, in addition to remitting the assessment collected pursuant to §1280.217, shall pay an assessment equal to forty-two cents (\$0.42) per head of lambs purchased by the first handler for slaughter or slaughtered by such first handler

pursuant to a custom slaughter arrangement. The rates of assessment for first handlers shall be increased or decreased proportionately if the assessment paid by producers, seedstock producers, and feeders is increased or decreased. Such assessment shall be remitted with the assessments collected pursuant to §1280.217.

Dated: May 8, 2013

David R. Shipman
Administrator
Agricultural Marketing Service

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