



## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Parts 1221 and 1280**

**[Doc. No. AMS-LPS-17-0052]**

### **Referendum Procedures under the Sorghum Promotion, Research, and Information Order and the Lamb Promotion, Research, and Information Order; Removal of Obsolete References**

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

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This direct final rule will make technical amendments to the Sorghum Promotion, Research, and Information Order (Sorghum Order) and the Lamb Promotion, Research, and Information Order (Lamb Order) to remove obsolete and unnecessary provisions and to make conforming changes affected by the amendatory language revisions.

**DATES:** This rule is effective [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action, unless adverse comment is received by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. If adverse comment is received, the Agricultural Marketing Service (AMS) will publish a timely withdrawal of the rule in the Federal Register.

**ADDRESSES:** Comments should be submitted electronically at [www.regulations.gov](http://www.regulations.gov). Comments received will be posted without change, including any personal information provided. All comments should reference the docket number AMS-LPS-17-0052, the date of submission, and the page number of this issue of the Federal Register. Comments

may also be submitted to: Kenneth R. Payne, Director, Research and Promotion Division; Livestock and Poultry Program, AMS, U.S. Department of Agriculture (USDA); Room 2608-S, STOP 0251, 1400 Independence Avenue, SW., Washington, D.C. 20250-0251; or fax to (202) 720-1125. Comments will be made available for public inspection at Room 2608-S of the above address during regular business hours or electronically at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Payne, Director, Research and Promotion Division, by telephone at (202) 720-1118, by fax at (202) 720-1125, or by email at [kenneth.payne@ams.usda.gov](mailto:kenneth.payne@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Executive Orders 12866 and 13771, and Regulatory Flexibility Act**

This direct final rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order (E.O.) 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirement contained in E.O. 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of AMS has considered the economic effect of this direct final rule on small entities and has determined that this action does not have a significant economic impact on a substantial number of small business entities. The

purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

USDA's National Agricultural Statistics Service reported in the 2012 Census of Agriculture that there are 31,316 sheep farms in the U.S. and 22,908 farms where grain sorghum is grown. The majority of producers' subject to the Sorghum Order, 7 CFR part 1221, and Lamb Order, 7 CFR part 1280, are small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.201). SBA defines small agricultural producers as those having annual receipts of less than \$750,000.

This direct final rule imposes no new burden on the sorghum and lamb industries. It merely reduces the size of the Sorghum and Lamb Orders by removing sections that relate to now obsolete referendum activities. There are no new reporting, recordkeeping, or other compliance requirements as a result of this rule. Accordingly, the Administrator of AMS has determined that this direct final rule does not have a significant economic impact on a substantial number of small entities.

AMS is committed to complying with the E-Government Act of 2002 to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes. Accordingly, AMS developed options for companies requesting service to do so electronically.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this direct final rule.

**Executive Order 13175**

This direct final rule has been reviewed in accordance with the requirements of E.O. 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this action does not have substantial and direct effects on Tribal Governments and does not have significant Tribal implications.

**Executive Order 12988**

This direct final rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act prohibits States or political subdivisions of a State from imposing any requirement that is in addition to, or inconsistent with, any requirement of the Act. There are no civil justice implications associated with this direct final rule.

**Paperwork Reduction Act**

This direct final rule also contains no new information collection requirements; therefore, no analysis or approval under the Paperwork Reduction Act (44 U.S.C. 3501-3520) is required.

**Background and Technical Amendments**

National agricultural commodity research and promotion programs – also called R&P programs or checkoff programs (checkoff programs)—are designed to maintain and expand existing markets and develop new markets both domestically and internationally. They are funded through assessments paid by persons subject to the assessment.

Checkoff programs are administered by national boards created for that purpose and oversight is provided by USDA.

Some checkoff programs are authorized by their own commodity-specific Federal statutes. Others, like the sorghum and lamb checkoff programs addressed by this direct final rule, are authorized by the Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. 7401 et seq. (Generic Act).

The Sorghum and Lamb Orders authorize the collection of assessments from, respectively, sorghum producers and importers, and lamb producers, feeders, seedstock producers, first handlers, and exporters. Under both Orders, payers of assessments are entitled to vote in referenda on the continuation, suspension, or termination of their checkoff programs.

The Generic Act provides that two referenda must be conducted in each checkoff program created pursuant to its authority. The first referendum must be conducted either before a checkoff program goes into effect (to ascertain whether the Order is favored by the persons to be covered by it) or, alternatively, within 3 years after assessments begin (to determine whether a majority favors the continuation, suspension, or termination of the program). The second referendum must be conducted within 7 years after assessments begin to determine whether a majority favors the continuation, suspension, or termination of the program. All persons subject to assessments are allowed to vote in referenda.

The Sorghum and Lamb Orders each incorporate provisions for two required referenda, the first within 3 years and the second within 7 years after assessments begin.

Both Orders contain provisions for assessment payers to obtain refunds of assessments and for both boards to maintain escrow accounts ahead of these referenda. All of those referenda, two for sorghum and two for lamb, were conducted within the time frames defined by the Orders. In each of the four referenda, a large majority approved the relevant program's continuance. Those referenda will not be repeated. Thus, AMS is removing the sections and paragraphs of the Sorghum and Lamb Orders that relate to refunds and escrow accounts because they are obsolete.

In the Sorghum Order, §§1221.112(g), 1221.112(h), 1221.118, 1221.119, and 1221.120, which provided for escrow accounts and refunds in connection with required referenda, will be removed. In §1221.112, paragraphs (i) through (m) will be redesignated as (g) through (k), respectively. A conforming change will be made to §1221.128(a) to correct a reference.

In the Lamb Order, §§1280.214, 1280.215, 1280.216, and 1280.403, which provided for escrow accounts and refunds in connection with required referenda, will be removed.

AMS is issuing this direct final rule without a preceding proposed rule because this action is a routine, noncontroversial regulatory change that AMS believes will not generate adverse comment. The rule is conditional on the non-receipt of adverse comments. If adverse comment is received, AMS will withdraw the rule before the effective date.

**List of Subjects**  
**7 CFR Part 1221**

Administrative practice and procedure, Advertising, Agricultural research, Reporting and recordkeeping requirements, Sorghum.

**7 CFR Part 1280**

Administrative practice and procedure, Advertising, Agricultural research, Meat and meat products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, AMS is amending 7 CFR parts 1221 and 1280 as follows:

**PART 1221—SORGHUM PROMOTION, RESEARCH, AND INFORMATION ORDER**

1. The authority citation for part 1221 continues to read as follows:

**Authority:** 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

**§1221.112 [Amended]**

2. In §1221.112 remove paragraphs (g) and (h) and redesignate paragraphs (i) through (m) as paragraphs (g) through (k), respectively.

**§§1221.118, 1221.119, and 1221.120 [Removed]**

3. Remove §§1221.118, 1221.119, and 1221.120.
4. Revise §1221.128(a) to read as follows:

**§1221.128 Qualification.**

(a) Organizations receiving qualification from the Secretary will be entitled to submit requests for funding to the Board pursuant to §1221.112(h). Only one sorghum producer organization per State may be qualified.

\* \* \* \* \*

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

5. The authority citation for part 1280 continues to read as follows:

**Authority:** 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

**§§1280.214, 1280.215, 1280.216, and 1280.403 [Removed]**

6. Remove §§1280.214, 1280.215, 1280.216, and 1280.403.

Dated: July 20, 2018

Bruce Summers  
Administrator  
Agricultural Marketing Service

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