

Dated: December 17, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 784

RIN 0560-AH15

#### 2004 Ewe Lamb Replacement and Retention Payment Program

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

**ACTION:** Final rule.

**SUMMARY:** This rule sets forth the regulations for the 2004 Ewe Lamb Replacement and Retention Payment Program. This program will assist producers of sheep and promote the replacement and retention of ewe lamb breeding stock by providing payments to producers who have recently reduced production and flock size due to low prices, and other market conditions.

**DATES:** This rule is effective on December 23, 2004.

**FOR FURTHER INFORMATION CONTACT:** Danielle Cooke, Price Support Division, Farm Service Agency, United States Department of Agriculture, STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250-0512. Telephone (202) 720-1919; email: [Danielle.Cooke@wdc.usda.gov](mailto:Danielle.Cooke@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion of Final Rule

The ELRRPP provides direct payments to sheep producers in order to help the U.S. sheep industry achieve sustained competitiveness. A reduction in sheep producer income has experienced reduced production of sheep and lambs and flock size. The domestic sheep industry has experienced reduced market prices, production, flock size, and investment in improving sheep flocks. In addition, persistent drought conditions in major U.S. sheep-producing areas have reduced available feed and forage capacity. The ELRRPP will help alleviate some of the financial stress that sheep producers are facing with an infusion of funds to improve their flocks or meet other obligations.

The Farm Service Agency published a proposed rule for ELRRPP regulations on September 7, 2004, with a 30-day comment period which ended on October 7, 2004. The proposed rule

provided that ELRRPP be based on ewe lambs held in the period between August 1, 2003, through July 31, 2004, and then, on through the end of the lamb's own offspring lambing cycle, end at the conclusion of the application period and disbursement of allotted funds. The program will operate under regulations codified in 7 CFR part 784.

#### Comments and Changes to Final Rule

The Agency received 21 public comments during the 30-day comment period. One comment was received from a marketing cooperative, 8 comments were received from sheep and lamb producer associations, and 12 comments were received from individual members of sheep and lamb companies or ranch operations. All comments received were in support of the Ewe Lamb Replacement and Retention Payment Program and expressed the need for the program because of bad drought conditions that have severely impacted the sheep and lamb industry over the past few years. In addition, 19 out of 21 of the comments received requested the Agency implement an expeditious sign-up and conclusion so that payments can be issued to producers before the end of the calendar year. No substantive changes were made from the regulations contained in the proposed rule. However, clarifying changes were made to conform the new program with that previously administered and to promote efficiency. An unnecessary and inaccurate reference to a finality rule has been eliminated. Also, a clarifying provision has been added, among others, to specify that a purchase without possession during the base period would not constitute an acquisition in the base period. As clarified, a qualifying ewe lamb must at some point in the base period have been under 18 months old and not have, at that time, produced an offspring of its own. To receive payment, the applicant must certify that the lamb meets program conditions. The certification must show that, as of the time of certification, the lamb does not have parrot mouth, foot rot, or scrapie. Spot checks will be conducted and lambs found to have these conditions will be ineligible for payment. Other requirements apply, including holding the lamb for a specified period of time tied to the lambing cycle. Funding of the program is limited, and claims will accordingly be limited. A few comments indicated confusion with the information collection requirements of the program. These comments will be addressed in the Agency's submission of the information collection to the Office

of Management and Budget (OMB) under the Paperwork Reduction Act.

#### Executive Order 12866

This rule is issued in conformance with Executive Order 12866. This rule has been determined to be "Not Significant," and was not reviewed by OMB.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because FSA is not required by 5 U.S.C. 533 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

#### Environmental Review

It has been determined by an environmental assessment (EA) that the actions of the Ewe Lamb Replacement and Retention Payment Program (ELRRPP) will have no significant impact on the quality of the human environment. Therefore, an Environmental Impact Statement is not necessary to address the potential impacts of this rule.

#### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws that are inconsistent with this rule. Before any legal action may be brought regarding determinations made under 7 CFR part 784, administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372. See 48 FR 29115 (June 24, 1983) for the notice related to 7 CFR part 3014, subpart V.

#### Unfunded Mandates Reform Act

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

#### Paperwork Reduction Act of 1995

The information collection required to support ELRRPP has been approved by OMB and assigned OMB control number 0560-0246.

#### Executive Order 12612

This rule has no Federalism implications warranting a Federalism Assessment. This rule will not affect States, or their political subdivisions, or the distribution of power and

responsibilities among levels of government.

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

Agriculture, Livestock, Reporting and recordkeeping requirements.

■ Accordingly, 7 CFR part 784 is revised to read as follows:

### PART 784—2004 EWE LAMB REPLACEMENT AND RETENTION PAYMENT PROGRAM

Sec.

- 784.1 Applicability.
- 784.2 Administration.
- 784.3 Definitions.
- 784.4 Time and method of application.
- 784.5 Payment eligibility.
- 784.6 Rate of payment and limitations on funding.
- 784.7 Availability of funds.
- 784.8 Appeals.
- 784.9 Misrepresentation and scheme or device.
- 784.10 Estates, trusts, and minors.
- 784.11 Death, incompetence, or disappearance.
- 784.12 Maintaining records.
- 784.13 Refunds; joint and several liability.
- 784.14 Offsets and withholdings.
- 784.15 Assignments.
- 784.16 Termination of program.

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

#### § 784.1 Applicability.

(a) Subject to the availability of funds, this part establishes terms and conditions under which the 2004 Ewe Lamb Replacement and Retention Payment Program will be administered.

(b) Unless otherwise determined by the Farm Service Agency (FSA) in accordance with the provisions of this part, the amount that may be expended under this part for program payments shall not exceed \$18 million. Claims that exceed that amount will be prorated in accordance with § 784.7.

(c) To be eligible for payments, producers must comply with all provisions of this part and with any other conditions imposed by FSA.

#### § 784.2 Administration.

(a) This part shall be administered by FSA under the general direction and supervision of the Deputy Administrator for Farm Programs, FSA. The program shall be carried out in the field by FSA State and county committees (State and county committees) in accordance with their assigned duties and the regulations of this part.

(b) The Deputy Administrator for Farm Programs, FSA, or a designee, may reverse or modify a determination made by a State or county committee.

(c) The Deputy Administrator for Farm Programs, FSA, may waive or

modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not adversely affect the operation of the program.

(d) The program described under this part is a one-time program to be administered with respect to eligibility and qualifying factors occurring during or related to the base period of August 1, 2003 through July 31, 2004, as specified in this part.

#### § 784.3 Definitions.

The definitions in this section shall apply to the 2004 Ewe Lamb Replacement and Retention Payment Program and this part.

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

*Application* means the Ewe Lamb Replacement and Retention Payment Program Application.

*Application period* means the date established by the Deputy Administrator for producers to apply for program benefits. Unless otherwise announced, that period will end January 13, 2005.

*Base period* means the period from August 1, 2003, through July 31, 2004, during and after which ewe lambs must meet all qualifying eligibility criteria.

*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.

*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.

*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.

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

#### § 784.4 Time and method of application.

(a) A request for benefits under this part must be submitted on the Ewe

Lamb Replacement and Retention Program Application. The application form may be obtained in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the form at <http://www.usda.gov/dafp/psd/>.

(b) 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 date established by FSA. Applications not received by that date will be disapproved and 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.

(c) 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 and spot checks 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. Providing a false certification will lead to ineligibility for payments and may be subject to additional civil and criminal sanctions.

(d) The sheep and lamb operation requesting benefits under this part must maintain accurate records that document that they meet all eligibility requirements specified herein, as may be requested by FSA. Acceptable forms of supporting documentation include, but are not limited to: Sales receipts, farm management records, veterinarian certifications, scrapie program forms and identification numbers, as well as, other types of documents that prove the eligibility of the qualifying ewe lambs and the sheep and lamb operation. The supporting documentation provided must, at a minimum, include: date of lamb purchase or date of birth, date of lamb death (if applicable), lamb identification and control information, number of ewe lambs purchased or retained, and scrapie program identification numbers.

#### § 784.5 Payment eligibility.

(a) Payments can be made, as agreed to by FSA and subject to the availability of funds, for eligible ewe lambs considered by FSA, as determined by FSA only, to have been acquired or held during the base period by eligible sheep and lamb operations for breeding purposes. Payments may be made for

eligible ewe lambs held continuously by the operation, through the end of the compliance period, from the time of the first possession of the ewe lamb in the base period. The payment rate cannot exceed the rate provided for in § 784.6 and may be prorated pursuant to § 784.7. For purposes of this section, the "base period" is the period from August 1, 2003, through July 31, 2004. A purchase in the base period without possession in the base period will not be considered an acquisition in the base period for purposes of this section unless otherwise allowed by FSA.

(b) For the ewe lamb to be eligible, a sheep and lamb operation must certify that the ewe lamb:

(1) During at least part of the base period was a ewe lamb which was both, at the same time, not older than 18 months of age and had not produced an offspring; and

(2) At the time of certification, does not possess any of the following characteristics:

- (i) Parrot mouth; or
- (ii) Foot rot.

(c) The sheep and lamb operation must certify and agree to:

(1) Maintain the qualifying ewe lambs in the herd for at least one complete, normal offspring lambing cycle, the end of which shall constitute the end of the compliance period for the purposes of paragraph (a) of this section, and actually maintain the lambs for that period in accord with that certification. The "offspring" lambing cycle refers to the time in which the qualifying ewe lamb's own offspring would be weaned, in a normal course, from that qualifying ewe if the ewe were to have offspring, irrespective of whether the ewe actually produces offspring.

(2) Upon request by an AMS agent or FSA representative, allow the AMS agent or FSA Representative to verify that the ewe lambs meet qualifying characteristics. Spot checks will be conducted by FSA within 30 days of the end of the sign-up period. Any animal showing evidence of parrot mouth, foot rot, or scrapie in such spot checks will be considered to have had those conditions at the time of certification. Other spot checks may be conducted as needed.

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

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

(5) Be in compliance with all requirements relating to scrapie, as described in 9 CFR parts 54 and 79.

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

(e) In addition, to be eligible for payment, a sheep and lamb operation must submit a timely application during the application period for benefits and comply with all other terms and conditions of this part or that are contained in the application for such benefits, and such other conditions as may be imposed by FSA.

(f) Proof that each lamb was held during and through the end of the base period as required by paragraph (a) of this section, as must be determined individually for each lamb, shall be provided in such manner, and with such access to the operation and the documents and information related to the operation, as FSA may request.

#### **§ 784.6 Rate of payment and limitations on funding.**

(a) Subject to the availability of funds and to the proration provisions of § 784.7, payments for qualifying operations shall be \$18 for each qualifying ewe lamb retained or purchased for breeding purposes.

#### **§ 784.7 Availability of funds.**

Total payments under this part, unless otherwise determined by the FSA, cannot exceed \$18 million. In the event that approval of all eligible applications would result in expenditures in excess of the amount available, FSA shall prorate the available funds by a national factor to reduce the expected payments to be made to the amount available. The payment shall be made based on the national factored rate as determined by FSA. FSA shall prorate the payments in such manner as it, in its sole discretion, finds appropriate and reasonable.

#### **§ 784.8 Appeals.**

The appeal regulations set forth at parts 11 and 780 of this title apply to determinations made pursuant to this part.

#### **§ 784.9 Misrepresentation and scheme or device.**

(a) A sheep and lamb operation shall be ineligible to receive assistance under this program if it is determined by the State committee or the county committee to have:

- (1) Adopted any scheme or device that 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 section and for related charges. The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies that may apply.

#### **§ 784.10 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.

#### **§ 784.11 Death, incompetence, or disappearance.**

In the case of death, incompetence, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by FSA.

#### **§ 784.12 Maintaining records.**

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 after such date shall be at the risk of the party undertaking the destruction.

#### **§ 784.13 Refunds; joint and several liability.**

(a) In the event there is an inaccurate certification or 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, all related payments made under this part to any sheep and lamb operation 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 a sheep and lamb operation's application for payment as having an interest in the operation shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation.

(c) Interest shall be charged on 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 that 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.

#### **§ 784.14 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.

#### **§ 784.15 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.

#### **§ 784.16 Termination of program.**

This program will be terminated after payment has been made to those applications certified as eligible pursuant to the application period established in § 784.4.

Signed at Washington, on DC on December 17, 2004.

**Michael W. Yost,**

*Acting Administrator, Farm Service Agency.*

[FR Doc. 04-28061 Filed 12-22-04; 8:45 am]

**BILLING CODE 3410-05-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

**[Docket No. 2001-NM-179-AD; Amendment 39-13911; AD 2004-25-23]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Boeing Model 747 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes, that requires repetitive inspections for cracking of the top and side panel webs and panel stiffeners of the nose wheel well (NWW), and corrective actions if necessary. This action is necessary to detect and correct fatigue cracks in the top and side panel webs and stiffeners of the NWW, which could compromise the structural integrity of the NWW and could lead to the rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective January 27, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 2005.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call (202) 741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**FOR FURTHER INFORMATION CONTACT:** Nick Kusz, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6432; fax (425) 917-6590.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 747 series airplanes was published in the **Federal Register** on May 7, 2004 (69 FR 25519). That notice of proposed rulemaking (NPRM) proposed to require repetitive inspections for cracking of the top and side panel webs and panel stiffeners of the nose wheel well (NWW), and corrective actions if necessary.

#### **Explanation of New Service Information**

Since the issuance of the NPRM, Boeing has issued and we have reviewed Revision 2 of Boeing Alert Service Bulletin 747-53A2465, dated November 11, 2004 (the NPRM referred to Revision 1 of the service bulletin as the appropriate source of service information for accomplishing the proposed actions). Revision 2 of the service bulletin describes procedures for performing repetitive external detailed inspections for cracking of the top and side panel webs of the NWW (specified as Area 1 and Area 2 in the service bulletin), as applicable; performing repetitive internal detailed and surface high frequency eddy current (HFEC) inspections for cracking of the top and side panel stiffeners of the NWW (specified as Area 3 in the service bulletin); replacing cracked stiffeners with new stiffeners; and repairing any cracked panel web.

We have revised the final rule by adding new paragraph (a)(2) as an option to accomplishing the repetitive inspections required by paragraph (a)(1) (specified as paragraph (a) of the NPRM). The option allows operators to do the repetitive inspections specified in Revision 2 of the service bulletin. The compliance time intervals for the new, optional repetitive inspections are: (1) 1,000 flight cycles for the external detailed inspection, and (2) 6,000 flight cycles for the internal detailed and surface HFEC inspections, which is less stringent than the 1,000 flight-cycle interval for the repetitive inspections