

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1280

[Document No. AMS-LP-19-0093]

RIN 0581-AC06

#### Lamb Promotion, Research, and Information Order; Activity Changes

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

**ACTION:** Final rule.

**SUMMARY:** This rulemaking revises the Lamb Promotion, Research, and Information Order (Order), requiring market agencies (*e.g.*, commission merchant, auction market, livestock market) in the business of receiving lambs to collect and remit on behalf of the producer, feeder, or seedstock producer, the “live-weight” assessment on ovine animals sold and the “price-per-head” assessment owed by the first handler when lambs are sold through these channels. Market agencies are required to remit the full assessment to the American Lamb Board (also known as the Lamb, Promotion, Research, and Information Board (Board)) when ovine animals are sold. This rulemaking includes technical amendments to the Order, correcting references to assessment rates that were inadvertently not updated during the previous amendment to the Order.

#### **DATES:**

*Effective date:* January 21, 2022.

*Delayed enforcement date:*

Enforcement of the market agency assessment remittance procedures is delayed until March 22, 2022.

#### **FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** Under the Order (7 CFR part 1280), which became effective April 11, 2002, the Board administers a nationally coordinated program of research, development, and promotion activities designed to strengthen the position of, and to develop and expand the markets for, ovine animals and ovine products. The program is financed by producers, feeders, and seedstock producers (*i.e.*, producers) who pay an assessment of seven-tenths of a cent (\$0.007) per pound on all live lambs sold. Additionally, first handlers or exporters, pay \$0.42 per head on ovine animals purchased for slaughter.

The Order currently mandates that assessments be collected from producers or feeders for the sale of live lambs, and that the assessment be forwarded to the subsequent purchaser (if applicable) until remitted by a first handler or exporter. That first handler or exporter is responsible for submitting both the producer or feeder’s assessment and the first handler or exporter’s assessment and volume report to the Board. The collection process is known as a “pass-through” assessment. Since the initial Order was established, industry markets have evolved; non-traditional first handlers, such as ethnic processors (butcher shops) and farmers market

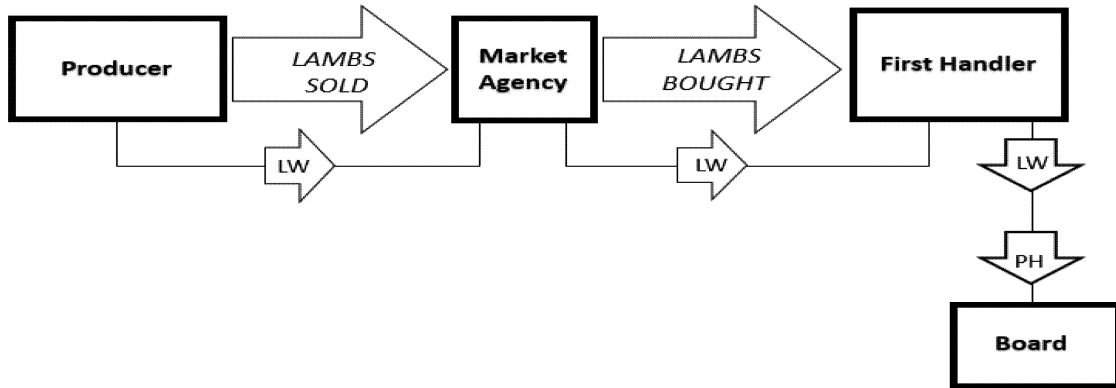
processors now participate to a larger degree in the purchasing and processing of lamb and lamb products. However, based on information about lamb sales from market agencies, the Board believes many non-traditional first handlers are not remitting assessments, as required by the Order. The Board, in turn, is not capturing all assessments paid by producers and feeders. Over the years, Board staff has worked to collect the owed lamb assessments from the nontraditional buyers, with limited success.

On January 23, 2019, the Board approved a motion to request the Secretary of Agriculture (Secretary) amend the assessment collection procedures and update corresponding sections of the Order. The revisions to the assessment collection procedures require market agencies to collect the full assessment, including the first handler assessment portion, for remittance to the Board. The assessment collection change only impacts lambs sold through market agencies. Other modes of sale, such as traditional markets (*e.g.*, first handler purchases from a producer or feeder, independent of a market agency) will continue to use the pass-through assessment collection process. *Examples 1 and 2* below show the current assessment collection processes when lambs are sold through a market agency:

*Example 1—Existing Procedures—Producer sells lambs at market agency to a first handler:* The producer pays the assessment to the market agency who passes the assessment through to the first handler. The first handler remits the live-weight (LW) and price-per-head (PH) assessments to the Board along with a Remittance Report form. This example is depicted in Figure 1.

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**Figure 1.**

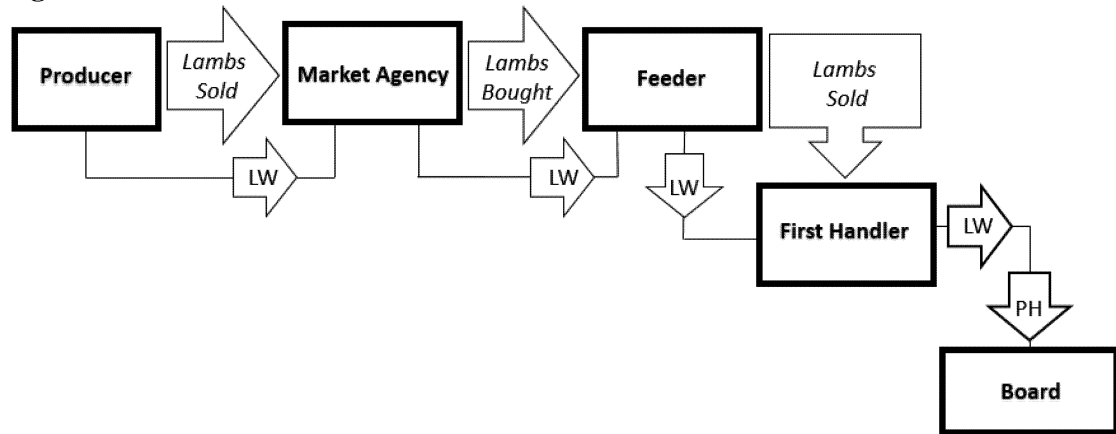


*Example 2—Existing Procedures—* Producer sells lambs at market agency to a feeder. At a later date, the feeder sells the same lambs to a first handler (via traditional sales/non-market

agency): The producer pays the live-weight assessment (LW) to the market agency, who passes the assessment through to the feeder. At a later date, the feeder sells the same lambs to a first

handler, where the LW assessment passes-through to the first handler, who remits the LW assessment and the PH assessment to the Board. This example is depicted in Figure 2.

**Figure 2.**



Under the proposed rule, existing procedures in *Example 1* above would stay the same and existing procedures in *Example 2* above, would be replaced as shown in the following three scenarios.

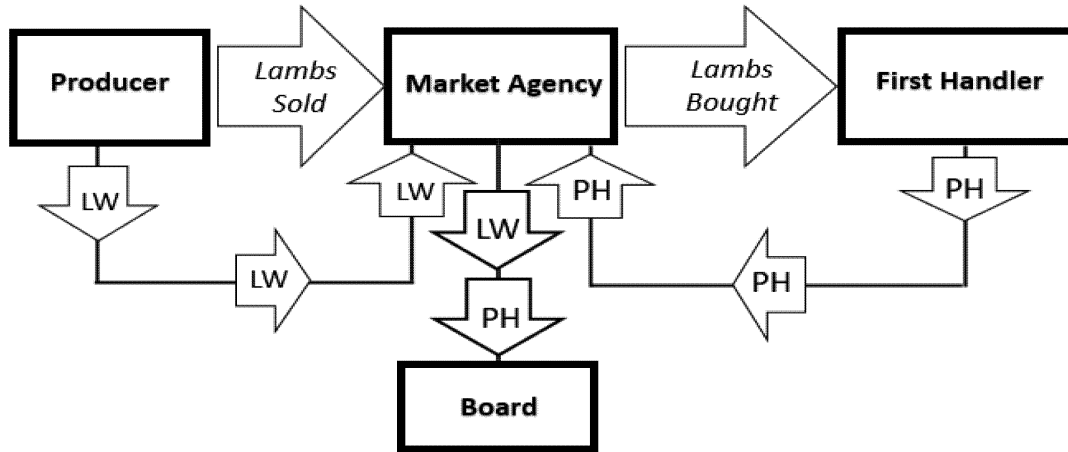
Under this final rule, existing procedures in *Example 1* and *Example*

*2* will be replaced as shown in the following three scenarios.

*Example 3—Revised Procedure—* Producer sells lambs at market agency to first handler: Under this final rule, the market agency collects the LW assessment from the producer and the

PH assessment from the first handler and remits both assessments to the Board. This example is depicted in Figure 3.

Figure 3.

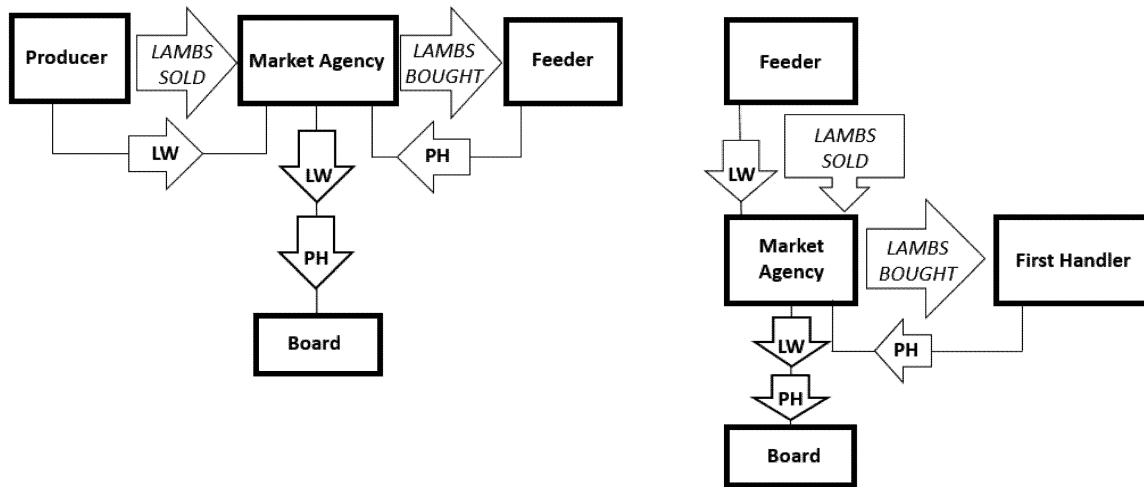


*Example 4—Revised Procedure—* Producer sells lambs at market agency to a feeder. At a later date, the feeder brings the same lambs to a market agency to sell to a first handler: The producer pays the LW assessment to the market agency. The feeder pays the PH assessment to the market agency, which remits both assessments to the Board (LW and PH). At a later date, when the feeder sells the same lambs at market

agency, the feeder pays the LW assessment to the market agency, and the first handler pays the PH assessment to the market agency, which remits both assessments to the Board (LW and PH). Since the feeder was initially charged the PH assessment (first handler's assessment) and then paid the total LW assessment (lambs sold at market agency to the first handler), the feeder is eligible for a refund on the original PH

assessment (initial first handler's assessment) and the difference between the total LW assessment and the producer's LW assessment. If the feeder were to exercise this option to recoup the two assessments, the feeder completes the Lamb Assessment Refund, form LP-85, and files with the Board to receive a refund. This example is depicted in Figure 4.

Figure 4.

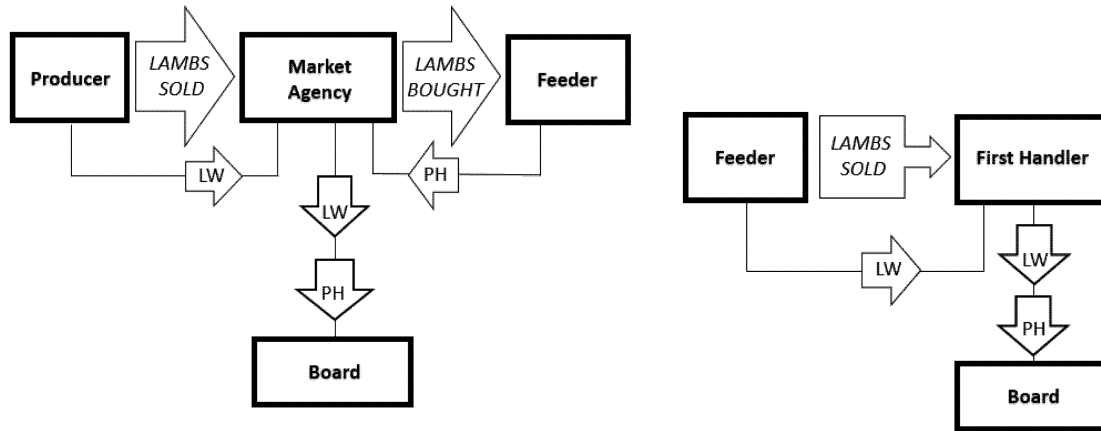


*Example 5—Revised Procedure—* Producer sells lambs at a market agency to a feeder. At a later date, the feeder sells the lambs to a first handler (via traditional market/non-market agency sale): The producer pays the LW assessment to the market agency. Additionally, the feeder pays the PH assessment to the market agency, which remits both assessments to the Board

(LW and PH). At a later date, when the feeder sells the lambs to a first handler (via traditional market/non-market agency sale), the feeder pays the LW assessment to the first handler, who remits the LW assessment and the PH assessment to the Board. The feeder is eligible for refunds on the original PH assessment paid (first handler assessment) and the difference between

the total LW assessment and the producer's original LW assessment. If the feeder were to exercise this option to recoup the two assessments, the feeder completes the Lamb Assessment Refund, form LP-85, and files with the Board to receive a refund. This example is depicted in Figure 5.

Figure 5.

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The amended collection process is estimated to generate approximately \$500,000 in new revenue, or approximately 20 percent of the Board's annual budget, based on 2019 production levels (pre-COVID 19). The Board's budget is based on the amount of assessments collected on an annual basis, voluntary contributions, and revenue derived from the investment of funds.

This final rule also adds a definition for *market agency* and makes technical corrections to the regulations that remove references to obsolete assessment rates. Finally, references to Order administration prior to appointment of the Board are removed.

The Commodity Promotion, Research, and Information Act of 1996 (Act) (7 U.S.C. 7413) provides for the creation of, and amendments to, the Order. The Order provides in § 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.

**Revisions**

This final rule revises § 1280.101 to consolidate definitions listed in § 1280.101 through § 1280.129 and to establish a definition for *market agency*. Sections 1280.102 through 1280.129 are removed. This change alphabetizes and consolidates the definitions into one section, to simplify any future revisions to the Definitions Section.

This final rule revises § 1280.217(a) to reflect the current assessment rate of seven-tenths of a cent (\$.007) per pound of live lambs sold. This corrects the reference to an obsolete assessment rate. Additionally, this final rule incorporates the last three sentences from current § 1280.217(e) into § 1280.217(a), maintaining the right of the Board to

raise or lower the assessment rate. Section 1280.217(e) will be removed.

This final rule revises § 1280.217(c) to reflect the current first handler assessment rate and make a conforming change to reflect the elimination of § 1280.217(e). Additionally, a reference in § 1280.217(c) to the assessment rate in § 1280.217(e) is revised to reference the assessment rate in corrected § 1280.217(a).

This final rule revises § 1280.217(d) requiring market agencies to collect and remit the producer, seedstock producer, feeder, or first handler assessments to the Board. Additionally, § 1280.217(d), provides that lamb feeder farms who pay assessments twice may request a refund by completing and submitting the Lamb Assessment Refund, form LP-85, to the Board. This final rule removes § 1280.217(g), as it is no longer applicable, and makes conforming changes. Additionally, this final rule redesignates § 1280.217(f) as § 1280.217(e) and § 1280.217(h) as § 1280.217(f).

This final rule revises § 1280.218 to reference the assessment rate established in § 1280.217(a). This final rule revises § 1280.218 to change assessment due dates from "time of export" to "the 15th day of the month following the month in which the lambs were purchased for slaughter and export or live export." This aligns with the current process for the collection of assessments listed in § 1280.220.

This final rule revises § 1280.220(a) and provides that market agencies, as well as first handlers and exporters, are responsible for collecting and remitting assessments to the Board.

This final rule makes a conforming change to § 1280.402(b) requiring market agencies to collect and remit assessments to the Board, to reflect the revision in § 1280.217(d).

Finally, this final rule revises § 1280.402(e)(1) by removing, ". . . if a first handler markets lambs or lamb products directly to consumers, in order to avoid late payment charges." This phrase, which is not applicable here, was placed in this section inadvertently and should be removed.

**Comments**

The Agricultural Marketing Service (AMS) received 11 submissions to the proposed rule, 3 of the submissions contained multiple comments to the proposed rule.

*Comment:* One comment from an individual agreed with the proposed rule.

*AMS Response:* No response.

*Comment:* One comment received from an individual stated, "go lambs."

*AMS Response:* No response.

*Comment:* One comment received by a livestock sales association was against the proposed rule, stating that ". . . requiring only transactions by marketing agencies, exporters, and first handlers to collect and remit the assessments, much of the volume currently conducted by marketing agencies will move away. This volume as well as volume currently conducted by other entities and individuals, will not be subject to collection and remittance of checkoff funds."

*AMS Response:* Traditional lamb sales (first handler purchases from a producer or feeder, independent of a market agency) will still be subject to the current assessment remittance procedures via the pass-through collection process. Additionally, the Board performs monthly compliance checks and random onsite audits to determine potential sellers and buyers who are not remitting their assessments. Lastly, if the Board is made aware of new processing facilities or individuals who are selling or buying lambs, they

will notify such individuals of their requirements to remit assessments and will perform onsite audits, if needed. These efforts assist in ensuring that all appropriate entities and individuals who are subject to collection and remittance of checkoff funds are following the requirements of the Act and Order.

*Comment:* One comment received by a national trade association for livestock auction markets, stated that “If auction markets are going to be made mandatory collection points, then all participants should be made to follow the rules of the checkoff through the pass-through and remittance requirements. The Board, through their partnership with the U.S. Department of Agriculture (USDA), AMS, should prioritize finding solutions to help those currently not participating in the process to come into compliance.

*AMS Response:* Anyone who sells or buys domestic lamb or lamb products in the United States of America, is required by law to pay the price-per-pound and price-per-head assessments. In order to reduce assessment delinquency rates or non-payment of assessment rates, the Board proposed market agencies collect the assessments at the point of sale/purchase. The collection of assessments at the market agency level will be a solution to those who do not currently participate in the assessment remittance process at the market agency level. Individuals who do not remit their assessments or who are late in the pass-through remittance process will continue to be subject to the Board’s Compliance Department. Additionally, the Board performs monthly compliance checks and random onsite audits to determine potential sellers and buyers who are not remitting their assessments. Lastly, if the Board is made aware of new processing facilities or individuals who are selling or buying lambs, they will notify such individuals of their requirements to remit assessments and will perform onsite audits, if needed. These efforts assist in ensuring that all appropriate entities and individuals who are subject to collection and remittance of checkoff funds are following the requirements of the Act and Order.

*Comment:* One comment received was concerned that “If the reason for making these changes are because first handlers are not remitting assessments to the Board now, it cannot be assumed they would disclose to the market agency they are the first handler and have the assessment deducted after the amendment.”

*AMS Response:* Under the final rule, anyone purchasing lambs at a market agency will be required to pay the \$0.42 per-head-assessment rate on ovine animals, regardless if the buyer discloses that they are a first handler or not. Currently, there is no requirement in the Order for disclosing first handler status.

*Comment:* One comment received was concerned with implementation costs of the proposed rule. Another commenter was concerned with implementation costs of the proposed rule as well as the technical training of market agency staff on how to perform assessment collection procedures.

*AMS Response:* The Board will cover the costs of upgrades to each respondent’s existing computer software system (at an estimated cost of \$500 per respondent) and provide hands-on training to amend the collection and remittance process. Once this final rule is implemented, the Board will perform educational outreach to the market agencies to educate them on the new collection and remittance process. The outreach efforts will also consist of mailed educational materials and training webinars, which is estimated to cost \$5 per respondent.

*Comment:* One commenter asked for flexibility on the frequency of assessment remittances to “relieve the burden of constant documentation and remittance on markets, particularly those who do not regularly sell small ruminants at their businesses.” Additionally, another commenter from an advocacy alliance group stated that “if market agencies already have low sales volume, it is the position of the alliance that AMS ought to be lifting burdens, rather than adding to them.”

*AMS Response:* Due to the above comments, AMS reopened the comment period on two separate occasions [86 FR 10459 and 86 FR 24513] to encourage additional input on:

1. What level or threshold should AMS consider as a low-volume market agency that might be eligible for additional flexibility?
2. Approximately how many market agencies would fit into such a category?
3. How would this type of flexibility reduce regulatory burden for those market agencies?

Unfortunately, during the two additional comment periods, no data was provided to AMS to define a low-volume market agency. Should such data be provided at a later date, AMS would consider defining a low-volume market agency in hopes of alleviating the burden to said agencies. However, the final rule does allow for flexibility in the remittance process as auction

markets only need to complete a remittance form when lambs were sold in the previous month. For those markets that do not sell lambs each month, this offers flexibility in the remittance of assessments. For example, seasonal market agencies, who facilitate the selling and buying of lambs for 3 months out of the year, will only be required to collect and remit assessments for those 3 months.

*Comment:* One commenter was concerned that the proposed rule could “create an incentive for sellers of sheep to choose to market their livestock outside of a public auction environment through other private channels (e.g., livestock dealers or direct sales) to skirt around checkoff requirements.”

*AMS Response:* Traditional lamb sales (first handler purchases from a producer or feeder, independent of a market agency) will still be subject to the current assessment remittance procedures via the pass-through collection process.

Multiple commenters responding to the proposed rule submitted comments that were outside the scope of this particular rulemaking. For example, one commenter suggested that Research and Promotion Programs should be voluntary in nature, instead of mandatory. Two commenters responded to the proposed rule in what appeared to be Slovakian language. When translated, the comments mentioned a cleaning company and the services they provided. Three commenters made disparaging remarks about the U.S. Government. Accordingly, AMS is making no changes to the final rule based on these comments.

#### **Executive Orders 12866 and 13563**

AMS is issuing this final rule in conformance with Executive Orders (E.O.) 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from E.O. 12866 review.

#### **Executive Order 12988**

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have a retroactive

effect. Section 524 of the Act provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within 2 years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or 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 USDA's final ruling.

#### Executive Order 13175

This final rule has been reviewed under E.O. 13175—Consultation and Coordination with Indian Tribal Governments. E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on: (1) Policies that have tribal implication including regulation, legislative comments, or proposed legislation; and (2) other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

AMS has assessed the impact of this final rule on Indian tribes and determined that this rule will not have tribal implications that require consultation under E.O. 13175. Additionally, AMS hosts a quarterly teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the final rule was shared with tribal leaders during a quarterly conference call. AMS will continue to work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to the regulations.

#### Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has performed a RFA review regarding the impact of the final rule on small 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. AMS determined that small businesses will not be unduly burdened.

The North American Industry Classification System (NAICS) code for sheep farms is 112410. The Small Business Association (SBA) size classification for this industry limits the number of employees for a small business to 100 people. Based on industry response, almost all lamb farms employ fewer than 100 people; in fact, almost all lamb farms employ less than 15 people. The majority of lamb farms are considered small businesses.

According to the 2017 Census of Agriculture (AC-17-A-51), there were 60,675 farms that sold sheep and lambs. This number includes sheep and lambs raised for dairy, wool, and meat. This final rule focuses only on those lambs raised for meat. The census does not break down the data to the level of lamb feeder farms. Therefore, AMS has worked with industry stakeholders to understand the makeup of the industry. According to lamb industry estimates, of those 60,675 farms, 500 farms are considered feeder farms that raise lambs for meat. Additionally, the lamb industry estimates that of those 500 feeder farms, approximately 10 percent, or 50 of those feeder farms, could potentially purchase/sell their lambs at market agencies. The remainder of the feeder farms sell lambs directly to a first handler. Therefore, AMS has concluded that the number of feeder farms that raise lambs for meat that will be financially impacted by this final rule will not be considered substantial.

This final rule does not increase the assessment rates under the Order, thus no new economic burden is placed on producers, feeders, seedstock producers, or first handlers for sales that take place outside of market agencies, as that process for paying assessments will not change. When a sale takes place at a market agency, no new burden will be placed on producers or seedstock producers, regardless of size, as they will continue to pay their assessments to the market agency. No new burden will be placed on first handlers of any size as they will remit assessments to the market agency instead of the Board.

However, the final rule will place a burden on feeder farms who pay assessments twice, having to seek reimbursement for two assessments paid for the same lambs by filling out a Lamb Assessment Refund form. However, AMS concluded that this impact will not be considered substantial. Under this final rule, a lamb feeder farm could potentially pay assessments twice in scenarios 4 and 5 described above and will need to fill out a refund form after selling the lambs through a market agency to recoup the twice-paid assessment. This paperwork burden is described in detail in the Paperwork Reduction Act section of this final rule. During the initial 60-day comment period [85 FR 62617], AMS sought comments on whether the limited data available is representative of industry lamb numbers and what alternative data sources, if any, were available to further refine this analysis. Unfortunately, no data existed.

This final rule does require market agencies to report and collect assessments from producers, feeders, seedstock producers, and first handlers; and remit to the Board, thus placing a new burden on market agencies to collect and remit assessments for the sale and purchase of lambs.

NAICS code for marketing agencies is 424520. Firms in the 424-sector classification are defined as large or small depending on the number of employees rather than sales values. SBA size classification for this industry limits the number of employees for a small business to 100. Data on employee numbers for this industry is available from the U.S. Department of Commerce, Census Bureau. The most recent available data to determine the size of firms in the industry is from the 2012 Economic Census. According to the data, the vast majority of the firms (666 of 668 total firms) are small businesses. According to industry, of the 666 existing firms, approximately 300 market agencies that sell lambs will be impacted by this final rule. Currently, 50 full-time market agencies are voluntarily collecting and remitting producer assessments to the Board; however, they are not collecting and remitting first handler assessments. Additionally, 250 seasonal market agencies are not collecting and remitting either of the assessments to the Board.

The Board provided AMS an estimate that all 50 full-time market agencies currently utilize computer software in their information collection and billing processes. Therefore, implementation costs will consist of upgrades to each respondent's existing computer software system and hands-on training to amend

the collection and remittance process, at an estimated cost of \$500 per respondent that will be paid for by the Board. Thus, lessening the burden on the markets. Additionally, the Board has provided an estimate to AMS that a large majority of the 250 seasonal market agencies currently perform their information collection and billing process utilizing computer software programs. Due to seasonal sales and low sheep volume sales per respondent, AMS anticipates that the seasonal markets will be able to utilize existing computer software systems or existing hard-copy tracking procedures for the new collection and remittance process. Once this final rule is implemented, the Board will perform educational outreach to the seasonal market agencies to educate them on the new collection and remittance process. The outreach efforts will consist of mailed educational materials and training webinars to limit the burden on auction managers to train personnel, which is estimated will cost \$5 per respondent. Once the computer software is installed and the outreach efforts have been completed, the physical submission of the assessments to the Board will be the only burden on market agencies, which is considered a minor burden. However, the option to electronically remit the owed assessments to the Board is available, which will further reduce the burden. AMS considered the economic effect of this action on small entities and has determined that this final rule, while imposing new administrative burdens on market agencies and some feeder farms, will not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction Act

The information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581-0093. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, subchapter I).

The existing form (LP-81) will be amended to require data for the total lambs sold/slaughtered, to effectively carry out the requirements of the program, and its use is necessary to fulfill the intent of the Act. The Board will supply such information for data processing software and/or technical expertise to train market agency staff on how to complete the information collection and remittance process. The lamb information collection and remittance form will be simple, easy to understand, and will place as small a

burden as possible on the person required to file the information.

The timing and frequency of collecting the revised information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. In addition, the information that will be included on this form is not available from other sources because such information relates specifically to individual market agencies who are reporting information subject to the provisions of the Act. There is no practical method for collecting the required information without the use of these forms.

*Information collection requirements that are in this proposal include:*

*Title:* LP-81—Lamb Promotion, Research, and Information Board Remittance Report form.

*OMB Number:* 0581-0093.

*Type of Request:* Amended collection.

*Abstract:* The information collection requirements are essential to carry out this rule.

The Order authorizes the collection of assessments from lamb producers, feeders, seedstock producers, and first handlers. Under this final rule, market agencies are required to collect and remit assessments, while the collection and remittance process remains unchanged for lamb sales independent of market agencies. This final rule requires assessment-related records, including the Remittance Report form, be retained for at least 2 years beyond the fiscal year of their applicability. This is consistent with the current recordkeeping requirements of the program. Two hundred fifty of the 300 market agency respondents operate on a seasonal basis. It is estimated that these market agencies will complete three responses per respondent, as assessments are submitted monthly and a typical season consists of 3 months. The additional 50 market agency respondents operate on a full-time basis. These market agencies will complete an estimated 12 responses per year per respondent, as assessments are submitted monthly.

The design of this form has been carefully reviewed and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other lamb programs administered by USDA. The form will be available through the Board or USDA. The information collection will be used only by authorized Board employees and representatives of USDA, including AMS staff.

(1) The request for approval of the amended information collection is as

follows: Form LP-81, Lamb Promotion, Research, and Information Board Remittance Report form.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 1 hour per lamb sale or purchase via market agency.

*Respondents:* Lamb Market Agencies.  
*Estimated Number of Respondents:* 800 (includes 300 new respondents—50 monthly and 250 seasonal).

*Estimated Number of Responses per new Respondent per year:* 12 (monthly respondents  $12 \times 550 = 6,600$  responses; and seasonal respondents  $1 \times 250 = 250$  responses).

*Estimated Total Annual Burden on Respondents:* 6,850 hours (includes 850 new burden hours annually).

The total annual estimated cost for market agencies in providing the information to the Board is \$125,150 (Increase in response total  $850 \times \$18.27 = \$15,529.50$ ; grand total is  $6,850 \times \$18.27 = \$125,149.50$ ). This total has been estimated by multiplying 850 total burden hours by \$18.27, the estimated wage rate of respondents. AMS used the hourly wage of farmworkers, farm, ranch, and aquaculture animals as obtained from the U.S. Bureau of Labor Statistics, Occupational Employment and Wages, published May 2018. This publication can be found at the following website: [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm).

The average hourly wage rate of \$13.87 with an additional 31.7 percent to account for benefits and compensations, for an hourly wage of \$18.27, was used to calculate annual cost. Costs of benefits and compensation guidance were provided by Bureau of Labor Statistics News Release issued December 14, 2018.

To offset startup costs associated with the new collection and remittance process, the Board will allocate approximately \$500 per full-time market agency respondent to upgrade their computer software programs and to provide staff training for the new collection and remittance procedures (50 full-time market agencies  $\times \$500 = \$25,000$ ). Additionally, the Board will provide educational training materials and will host training webinars with seasonal market agency staff on the new collection and remittance process. The Board will allocate approximately \$5 for the educational materials and webinar training costs per seasonal market agency respondent (250 seasonal market agencies  $\times \$5 = \$1,250$ ).

This final rule also announces that AMS sought approval for a new information collection and recordkeeping requirement that is imposed under the Order. The new

information collection has been submitted to OMB for approval.

The “Lamb Feeder Checkoff Refund” form will require the minimum information necessary to effectively carry out the requirements of the program, and its use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and requesting a refund from the Board. The form will be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. In addition, the information to be included on this form is not available from other sources because such information relates specifically to individual market agencies who are subject to the provisions of the Act. Therefore, there is no practical method for collecting the required information without the use of these forms.

*Information collection requirements that are included in this proposal include:*

*Title:* LP-85—Lamb Assessment Refund Form.

*OMB Number:* 0581-0325.

*Type of Request:* New collection.

*Abstract:* The information collection requirements are essential to carry out this final rule.

The Order authorizes the collection of assessments from lamb producers, feeders, seedstock producers, and first handlers. Under this final rule, market agencies are required to collect and remit assessments for the purchase and sale of lambs, while the collection and remittance process remain unchanged when sales occur independent of market agencies. This final rule requires assessment-related records to be retained for at least 2 years beyond the fiscal year of their applicability. This is consistent with the current recordkeeping requirements of the program. According to the 2017 Census of Agriculture (AC-17-A-51), there were 60,675 farms that sold lambs. The census does not breakdown the data to the level of feeder farms. Therefore, AMS has worked with industry to understand the makeup of the industry. Of those farms, the lamb industry estimated that 500 are considered feeder farms. Additionally, the lamb industry estimates that of those 500 feeder farms, approximately 10 percent, or 50, of

those feeder farms purchase or sell lambs at market agencies. The estimated time for each respondent to complete the Lamb Feeder Checkoff Refund form is 15 minutes. The estimated total hours for all respondents to complete the form is 150 hours (*i.e.*, 50 respondents multiplied by one quarter of an hour to complete the form per respondent multiplied by 12 forms being filled out per year, per respondent). The estimated total cost of requesting a refund from the Board, for all respondents, will be \$2,740.50. The total cost has been estimated by multiplying the total hours for respondents to complete the form (150 hours) by \$18.27, which is what AMS used for the hourly wage of farmworkers, farm, ranch, and aquaculture animals, as obtained from the U.S. Bureau of Labor Statistics, Occupational Employment and Wages, published May 2018. This publication can be found at the following website: [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm).

Based on the average hourly wage rate of \$13.87 with an additional 31.7 percent to account for benefits and compensations, for an hourly wage of \$18.27 was used to calculate annual cost. Costs of benefits and compensation guidance was provided by Bureau of Labor Statistics News Release issued December 14, 2018.

The design of this form has been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other lamb program administered by USDA. The form will be available through the Board or USDA. The information collection will be used only by authorized Board employees and representatives of USDA, including AMS staff.

(2) The request for approval of the new information collection is as follows: Form LP-85, Lamb Feeder Checkoff Refund form.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 15 minutes per lamb purchase/sale by a feeder at a market agency.

*Respondents:* Feeder farms who sell lambs at market agencies.

*Estimated Number of Respondents:* 50.

*Estimated Number of Responses per Respondent per Year:* 12.

*Estimated Total Annual Burden on Respondents:* 150 hours.

*Total Cost:* \$2,740.50.

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

Administrative practice and procedure, Advertising, Agricultural

research, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 1280 as follows:

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

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

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

■ 2. Section 1280.101 is revised to read as follows:

##### § 1280.101 Definitions

*Act* means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425; Public Law 104–127; 110 Stat. 1029, as amended), or any amendments thereto.

*Board* means the Lamb Promotion, Research, and Information Board established pursuant to § 1280.201.

*Certified organization* means any organization which has been certified by the Secretary pursuant to this part as being eligible to submit nominations for membership on the Board.

*Conflict of interest* means a situation in which a member or employee of a Board has a direct or indirect financial interest in a person that performs a service for, or enters into a contract with, a Board for anything of economic value.

*Department* means the United States Department of Agriculture.

*Exporter* means any person who exports domestic live lambs from the United States.

*Feeder* means any person who acquires ownership of lambs and feeds such lambs in the U.S. until they reach slaughter weight.

*First handler* means the packer or other person who buys or takes possession of lambs from a producer or feeder for slaughter, including custom slaughter. If a producer or feeder markets lamb products directly to consumers, the producer or feeder shall be considered a first handler with respect to such lambs produced by the producer or feeder.

*Fiscal period and marketing year* mean the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

*Information* means information and programs that are designed to increase efficiency in producing lambs, to



maintain and expand existing markets, and to develop new markets, marketing strategies, increased market efficiency, and activities that are designed to enhance the image of lamb and lamb products on a national or international basis. These include:

(1) Consumer information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, and nutritional attributes of lamb and lamb products; and

(2) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the lamb industry, and activities to enhance the image of lamb.

*Lamb* means ovine animals of any age, including ewes and rams.

*Lamb products* means products produced in whole or in part from lamb, including pelts, and excluding wool and wool products.

*Market agency* means commission merchant, auction market, or livestock market in the business of receiving lambs or lamb products for sale or purchase on commission for or on behalf of a producer, feeder, seedstock producer, or first handler.

*Order* means an Order issued by the Secretary under § 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

*Part* means the Lamb Promotion, Research, and Information Order and all rules and regulations issued pursuant to the Act and the Order. The Order shall be a subpart of the Part.

*Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

*Producer* means any person who owns and produces lambs in the United States for sale.

*Producer information* means activities designed to provide producers, feeders, and first handlers with information relating to production or marketing efficiencies, development of new markets, program activities, or other information that would facilitate an increase in the demand for lamb or lamb products.

*Promotion* means any action, including paid advertising and the dissemination of culinary and nutritional information and public relations with emphasis on new marketing strategies, to present a favorable image of U.S. lamb products to the public for the purpose of improving

the competitive position of U.S. lamb and lamb products in the marketplace and to stimulate sales.

*Referendum* means a referendum to be conducted by the Secretary pursuant to the Act whereby producers, feeders, first handlers, and exporters shall be given the opportunity to vote to determine whether the continuance of this subpart is favored by a majority of eligible persons voting and a majority of volume voting.

*Research* means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of lamb or lamb products.

*Secretary* means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

*Seedstock producer* means any lamb producer in the U.S. who engages in the production and sale of breeding replacement lambs or semen or embryos.

*State* means each of the 50 States and the District of Columbia.

*Suspend* means to issue a rule under § 553 of title 5 U.S.C., to temporarily prevent the operation of an Order or part thereof during a particular period of time specified in the rule.

*Terminate* means to issue a rule under § 553 of title 5 U.S.C., to cancel permanently the operation of an Order or part thereof beginning on a date certain specified in the rule.

*Unit* means each State, group of States, or class designation (producers, feeders, first handlers, or seedstock producers) that is represented on the Board.

*United States* means collectively the 50 States and the District of Columbia.

*Wool* means fiber from the fleece of a lamb.

*Wool products* mean products produced, in whole or in part, from wool and products containing wool fiber, excluding pelts.

**§§ 1280.102 through 1280.129 [Removed and Reserved]**

■ 3. Remove and reserve §§ 1280.102 through 1280.129.

■ 4. Section 1280.217 is amended by:

■ a. Revising paragraphs (a), (c), and (d);  
 ■ b. Removing paragraphs (e) and (g); and

■ c. Redesignating paragraphs (f) and (h) as paragraphs (e) and (f), respectively.

The revisions read as follows:

**§ 1280.217 Lamb purchases.**

(a) Except as prescribed by regulations approved by the Secretary, each first handler or exporter making payment to a producer, seedstock producer, or feeder for lambs purchased from such producer, seedstock producer, or feeder shall collect an assessment from the producer, seedstock producer, or feeder. Each producer, seedstock producer, or feeder shall pay such assessment to the first handler or exporter, at the rate of seven-tenths of a cent (\$.007) per pound of live lambs sold. The rate of assessment may be raised or lowered no more than twenty-hundredths of a cent (\$.002) in any one year. The Board may recommend any change in the assessment rate 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.

\* \* \* \* \*

(c) Each person processing or causing to be processed lambs or lamb products of that person's own production and marketing such lambs or lamb products, shall pay an assessment on such lambs or lamb products on the live weight of the lamb at the time of slaughter at the rate established in subparagraph (a) of this section. In addition, pursuant to § 1280.108, such an individual is considered a first handler and is required by § 1280.219 to pay an additional assessment of \$0.42 per head. As the first handler, the individual must remit the total amount of assessments to the Board.

(d) A market agency shall collect an assessment from the producer, seedstock producer, feeder, or first handler and remit the collected assessment to the Board. Any person who pays more than one assessment on the same lamb may be eligible for a refund by submitting a request on a form provided by the Board.

\* \* \* \* \*

■ 5. Section 1280.218 is revised to read as follows:

**§ 1280.218 Exporter.**

Each person exporting live lambs or lamb products, including an exporter directly exporting his or her own lambs or lamb products, shall remit to the Board an assessment at the rate established in § 1280.217(a) by the 15th day of the month following the month in which the live lambs were purchased for slaughter and export or live export.

■ 6. Section 1280.220 is amended by revising paragraph (a) to read as follows:

**§ 1280.220 Collections.**

(a) Each first handler, market agency, and exporter responsible for the collection of assessments under this subpart shall remit assessments to the Board by the 15th day of the month following the month in which the lambs were purchased for slaughter or export.

\* \* \* \* \*

■ 7. Section 1280.402 is amended by revising paragraphs (b) and (e)(1) to read as follows:

**§ 1280.402 Assessments.**

\* \* \* \* \*

(b) *Market agency.* A market agency will be required to collect an assessment from the producer, feeder, seedstock producer, or first handler and remit the collected assessment to the Board.

\* \* \* \* \*

(e) \* \* \*

(1) Assessments shall be remitted to the Lamb Promotion, Research, and Information Program, c/o the Secretary at USDA, 23029 Network Place, Chicago, Illinois 60673–1230, with a “Monthly Remittance Report” form not later than the 15th day of the following month in which lambs or lamb products were purchased for slaughter or export, or marketed.

\* \* \* \* \*

**Melissa Bailey,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2021–27467 Filed 12–21–21; 8:45 am]

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**DEPARTMENT OF HOMELAND SECURITY**
**8 CFR Part 214**

**RIN 1615–AC61**

**Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H–1B Petitions, Implementation of Vacatur**

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** Final rule; withdrawal.

**SUMMARY:** This final rule withdraws the “Modification of Registration Requirement for Petitioners Seeking to File Cap-Subject H–1B Petitions,” final rule issued on January 8, 2021, because that rule has been vacated by a Federal district court.

**DATES:** The Department of Homeland Security is withdrawing the final rule published January 8, 2021 (86 FR 1676), which was delayed by the final rule

published February 8, 2021 (86 FR 8543), as of December 22, 2021.

**FOR FURTHER INFORMATION CONTACT:** Charles L. Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Mail Stop 2090, Camp Springs, MD 20588–0009. Telephone Number (240) 721–3000 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:****I. Background and Basis for Removal of Regulations**

On January 8, 2021, after going through notice and comment rulemaking, the Department of Homeland Security (DHS) issued a final rule titled “Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H–1B Petitions” (“H–1B Selection Final Rule”).<sup>1</sup> The rule was scheduled to go into effect on March 9, 2021. On February 8, 2021, DHS issued a final rule delaying the effective date of the H–1B Selection Final Rule to December 31, 2021.<sup>2</sup> On March 19, 2021, Plaintiffs in ongoing litigation moved to file an amended complaint in the U.S. District Court for the Northern District of California adding the H–1B Selection Final Rule to the list of challenged agency actions,<sup>3</sup> which the court granted leave to file on April 15, 2021.<sup>4</sup> Following several months of litigation, on September 15, 2021, the court vacated the H–1B Selection Final Rule and remanded the matter to DHS.<sup>5</sup>

DHS intends to comply with the court’s decision vacating the H–1B Selection Final Rule. Therefore, since regulatory changes promulgated through

<sup>1</sup> *Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H–1B Petitions*, 86 FR 1676 (Jan. 8, 2021).

<sup>2</sup> *Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H–1B Petitions; Delay of Effective Date*, 86 FR 8543 (Feb. 8, 2021).

<sup>3</sup> *See Chamber of Commerce of the United States of America et al. v. United States Department of Homeland Security, et al.*, No. 4:20–cv–07331 (N.D. Cal. March 19, 2021) (Amended Complaint).

<sup>4</sup> *See Chamber of Commerce of the United States of America et al. v. United States Department of Homeland Security, et al.*, No. 4:20–cv–07331 (N.D. Cal. Apr. 15, 2021) (Order Permitting Supplementation of Complaint and Extending Deadline to Submit Joint Case Management Conference Statement).

<sup>5</sup> *See Chamber of Commerce of the United States of America et al. v. United States Department of Homeland Security, et al.*, No. 4:20–cv–07331 (N.D. Cal. Sep. 15, 2021) (Order Granting Pl.’s Motion for Summary Judgment and Denying Def.’s Cross-Motion for Summary Judgment; Judgment). On November 12, 2021 a notice of appeal was filed in the case. On November 30, 2021, the government filed a motion to voluntarily dismiss the appeal, and the appeal was dismissed on December 2, 2021. The district court’s judgment is final.

the H–1B Selection Final Rule are scheduled to be codified in the Code of Federal Regulations (CFR) at 8 CFR 214.2 on the rule’s new effective date, December 31, 2021, DHS is issuing this rule to withdraw the vacated H–1B Selection Final Rule.

DHS is not required to provide notice and comment or delay the effective date of this rule because this rule simply implements the court’s vacatur of the H–1B Selection Final Rule and ensures that the vacated regulatory provisions are not codified in CFR. Following the vacatur, the changes made by the H–1B Selection Final Rule do not have any legal effect.

Moreover, good cause exists here for forgoing notice and comment and a delayed effective date even if those procedures were otherwise required. Notice and comment and a delayed effective date are unnecessary for the implementation of the court’s order vacating the rule and would be impracticable in light of the agency’s immediate need to implement the final judgment. *See* 5 U.S.C. 553(b)(B), (d). Furthermore, DHS believes that delaying this ministerial act would be contrary to public interest because it could lead to vacated regulatory provisions being codified and significant confusion among the regulated public regarding the administration of the fiscal year (FY) 2023 H–1B numerical allocations, generally known as the “H–1B cap,” which is likely to begin in early March 2022.<sup>6</sup>

DHS has concluded that each of those three reasons—that notice and comment and a delayed effective date are unnecessary, impracticable, and contrary to the public interest— independently provides good cause to bypass any otherwise applicable requirements of notice and comment and a delayed effective date.

**II. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521, DHS is required to submit to the Office of Management and Budget (OMB), for review and approval, collections of information and changes to collections of information. The following information collections are impacted by the vacatur. DHS is withdrawing the

<sup>6</sup> *See* 8 CFR 214.2(h)(8)(iii)(A)(3) (explaining that the annual initial registration period will start at least 14 calendar days before the earliest date on which H–1B cap-subject petitions may be filed, consistent with 8 CFR 214.2(h)(2)(i)(I). For the FY 2023 H–1B numerical allocations, the earliest date that H–1B cap-subject petitions may be filed is April 1, 2022, such that registration is likely to commence in early March 2022).