

if it determined that they could effectively carry out certain projects, however, we believe that this language would unduly restrict the Board's authority to enter into contracts. The Department finds that § 1280.211(h) mirrors the Act which states: "* * * to contract with entities, if necessary, to carry out plans and projects in accordance with the Act." Accordingly, we have not adopted this language.

One commenter suggested that the Board should contract directly with existing national lamb organizations like the other existing livestock checkoff programs that contract with national organizations because this would ensure continued funding for such existing national organizations. The Act provides the Board with the power to contract with such entities, if necessary, to implement plans or projects in accordance with the Act. However, this suggestion if adopted as a requirement would limit the Board's ability to conduct its program in the most efficient and effective manner. Accordingly, we have not adopted this suggestion.

Section 1280.215 Use of Assessments

Fifty-nine commenters suggested that funds collected under the program should be used to fund promotion programs of "Fresh American Lamb" and other U.S. sheep products because the majority of funds collected would be generated from U.S. producers and feeders. Additionally, some commenters suggested using domestic assessments to fund promotion projects for "Fresh American Lamb" and other U.S. sheep products would provide the Board with the flexibility to establish the most effective program to enhance the markets for lamb and other sheep products. Furthermore, many commenters believe that this program is a domestic program funded primarily by U.S. growers, and because other livestock research and promotion programs do not prohibit country of origin promotion, funds generated under this program should not prohibit country of origin promotion. However other commenters contend that funds generated under the program should not be used for specific country of origin promotion, but to promote lamb and wool generically because generic promotion would provide for more equitable use of funds and be less subject to legal challenge. In addition, the same commenters pointed out that the promotion of lamb and wool generically would ensure that importers are not disadvantaged in light of their limited representation on the Board and the Executive Committee.

The Department believes that the Board should have the latitude to fund promotion plans and projects which specifically make reference to sheep and wool produced in the U.S. with the limitation that funding for such domestic country of origin plans and projects cannot exceed the combined domestic assessments collected on sheep and sheep products and further that the percentage of domestic assessments spent on the promotion of domestic sheep and sheep products shall not exceed the percentage of import assessments spent on the generic promotion of sheep and sheep products. Accordingly, § 1280.215 is revised in this proposed Order to allow Board funding of promotion plans and projects which involve identification of domestic sheep and sheep products as being U.S. produced but limit the amount of assessments the Board can spend on such plans and projects.

One commenter suggested that at least one-half of the assessments collected should be spent on promotion activities because the industry is changing and in a crisis. The Department believes that establishing a specific amount of assessments to fund a specific program area in the Order would limit the Board's flexibility to administer the program effectively. Accordingly, we have not adopted this suggestion. This same commenter also suggested that the National Lamb Feeders Association (NLFA) receive funding from the new Board. We previously determined that the Act does not authorize such funding and do not adopt this suggestion in this proposed Order.

Two commenters suggested that funds generated under the Act and the Order should promote a wide range of wool products in the United States, including interior textile products; e.g., carpets, rugs, and upholstery. The Department believes that the Board should be given the latitude to use funds for programs in a manner that would benefit the industry most effectively. The Department anticipates that the Board would fund projects according to the needs of the industry. Accordingly, we have not adopted this suggestion.

Two commenters suggested that assessments collected on wool should be spent on wool projects and assessments collected on lamb should be spent on lamb projects. The Department believes that the Board should have the latitude to spend funds on projects that would best address the economic needs of the entire industry. Accordingly, we have not adopted this suggestion.

One commenter suggested that no more than 4 percent of the annual

assessments collected should be used for overhead and administrative expenses, in order to limit the amount of assessments used for such expenses. The Act does not limit administrative and overhead expenses. The Department expects that the Board would maintain its administrative and overhead expenses at a reasonable level. Accordingly, we have not adopted this suggestion.

Some commenters suggested that any funds used for export promotion or in furtherance of other export activity should be separately accounted for, a percentage of total Board funds used in this manner should be refunded to importers who pay the assessments, and that expenditures for production-related research or information programs specifically targeted for promotion or product quality and safety-related expenditures should be treated similarly because such expenditures would not benefit importers. The Department has concluded that the Board should have the latitude to determine how funds are to be spent, subject to the approval of the Secretary. Further, the Act does not provide for reimbursements. Accordingly, we have not adopted these suggestions.

Executive Committee

Section 1280.217 Membership

One commenter suggested that each of the seven regions established under § 1280.211(n) in the proposed Order should be represented by one member of the Executive Committee for a total of seven members representing producers. The commenter further suggested that (1) each member be elected by a majority vote of the directors from their respective region; (2) three members represent feeders and be elected by a majority vote of the 10 feeder directors; and (3) three members represent importers and be elected by a majority vote of the 25 importer directors. The Department believes that the Board should have the latitude to determine how the Executive Committee is structured, within the requirements of the Act, and that the Board should establish voting requirements in its policies and procedures, subject to the Secretary's approval. In addition, the Act provides for one "feeder," member on the Executive Committee, not three. Accordingly, we have not adopted this suggestion.

One commenter suggested that § 1280.217 in the proposed Order implicates both equal protection and compelled association clauses of the Constitution because feeder and importer members would be elected by