

the Board should be elected by the members of each industry segment because the Secretary is unfamiliar with the abilities of individuals in the various industries. The Department believes that the certification and nomination process would give the Secretary the opportunity to appoint members who best represent each industry segment because certified organizations comprised of members of those segments will submit nominations to the Board. Additionally, the Act requires the Secretary to appoint the Board. Accordingly, we have not adopted this suggestion.

One commenter stated that the Department had modified the language of its initial proposal concerning nomination of importers in a way that made it appear that importer representatives need not be actual importers. The commenter suggests that the term "importer representatives" be used rather than "importer" because the term "importer representatives" would be less restrictive and does not imply that the Board members must actually import wool products. The Department did not include this portion of the proposal as submitted. However, the Department has again reviewed the original language in the initial proposal and believes that its slight modification did not materially change the proposal's meaning. The Act requires the Secretary to appoint importers to seats established under the Act from nominations submitted by qualified organizations that represent importers. Furthermore, the Act defines "importer" as any person who imports sheep or sheep products into the United States and a "person" as any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. Consequently, the Department believes that the Act intended that persons who import sheep and sheep products should be eligible for appointment to the Board. Accordingly, we have not adopted this suggestion.

One commenter opposed the inclusion of 25 importers on the Board because U.S. producers do not have the opportunity to influence policy in foreign countries. The Act provides that 25 importers of sheep and sheep products are to be represented on the Board. Accordingly, we have not adopted this suggestion.

Two commenters suggested that § 1280.202 of the proposed Order limits nominations to members of certified organizations because the definition of "feeder" and "producer" appears to allow a producer to qualify as a feeder but specifically prohibits feeders from

qualifying as producers. In addition, the commenters believe that the definition of "feeder" and "producer" may also invite First Amendment challenges by individuals claiming to occupy, or to have an opportunity to occupy a feeder seat, but who are required to join a producer trade association and pay dues to such association to be eligible to be nominated to the Board. The Department carefully reviewed the Act, the proposed Order, and the nomination procedures to ensure that the nomination process would be conducted as provided for in the Act. The Act provides for certified producer organizations to submit only nominations from their membership for the unit in which the certified organization is located. There is no similar restriction on certified feeder and importer organizations. The Department finds no need to change the Order as a result of these comments.

One commenter suggested that the Secretary should not be authorized to appoint the Board. The Act specifically authorizes the Secretary to appoint the Board from nominations submitted by certified organizations. Accordingly, we have rejected this suggestion.

#### *Section 1280.205 Method of Obtaining Nominations*

One commenter suggested that § 1280.205(a) (1) and (2) in the proposed Order should provide that individuals as well as certified organizations be certified as eligible to submit nominations. The Act provides for all nominations to be made from certified producer, feeder and importer organizations. If no organization is certified for an industry segment or for a State in the case of producers, the proposed Order permits the Secretary to obtain nominees by other means. Accordingly, we have not adopted this suggestion. The commenter further suggested that § 1280.205(2)(C) in the proposed Order be amended to read as follows: "The organization has a primary and overriding interest in representing the feeder or importer segment of the sheep industry as opposed to some other aspect of the industry." The Act establishes the criteria for certification, and it is not necessary to modify the Order in order to carry out the Act's provisions. The Department finds that the proposed changes to § 1280.205 enumerated above are unnecessary. Accordingly, we have not adopted them.

One commenter noted that § 1280.205(b)(2) in the proposed Order contained a misprint and suggested that the language "shall be made by the Secretary" be inserted between the

words "Board" and "from." There was, in fact, a misprint and we have amended the language in § 1280.205(b)(2) of the Order to mirror the language in the Act.

One commenter was concerned that producer nominees would have to be members of a certified organization in order to be nominated to the Board. The Act requires producer organizations to submit only nominations from the membership of the organization for the unit in which the organization is located. Accordingly, we have not changed this subsection in this proposed rule.

#### *Section 1280.207 Certification*

One commenter suggested that the National Lamb Feeders Association be the exclusive nominator of lamb feeder representatives, and be eligible to submit the names of the 15 sheep feeders for appointment to the 10 sheep feeder positions on the Board. The Department considered a similar comment proposed during the development of the proposed Order and did not accept it for inclusion in the proposed Order. This suggestion, if accepted, would prevent other existing organizations or new organizations from being eligible to nominate feeders to the Board, thereby restricting the opportunity for all qualified organizations to participate in the nomination process in contravention of the Act. Accordingly, we have rejected this suggestion.

#### *Section 1280.208 Term of Office*

One commenter noted that the word "proportionally" was substituted for the word "proportionately" in the proposed Order. To make the Order's language consistent with the language in the Act, we have replaced the word "proportionally" with "proportionately" in § 1280.208 in this proposed Order.

#### *Section 1280.211 Powers and Duties of the Board*

Two commenters suggested that § 1280.211(h) in the proposed Order should be amended to read as follows: "to contract with entities, if necessary, to implement plans or projects in accordance with the Act and whenever possible, the Board shall use existing national organizations representative of feeders, importers, or producers to implement plans and projects in order to increase efficiency and minimize costs." The Act does not require the Board to utilize existing national organizations to implement plans and projects. The Department believes that the Board could use such organizations