

Agricultural Marketing Service, USDA

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§ 1212.28 Suspend.

“Suspend” means to issue a rule under 5 U.S.C. 553 to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1212.29 State.

“State” means any of the fifty States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

§ 1212.30 Terminate.

“Terminate” means to issue a rule under 5 U.S.C. 553 to cancel permanently the operation of an order or part thereof beginning on a date certain specified in the rule.

§ 1212.31 United States.

“United States” means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

§ 1212.32 United States Customs Service.

“United States Customs Service” or “Customs” means the United States Customs and Border Protection, an agency of the Department of Homeland Security.

NATIONAL HONEY BOARD

§ 1212.40 Establishment and membership.

The National Honey Board is established to administer the terms and provisions of this part. The Board shall have ten members, composed of three first handler representatives, three importer representatives, three producer representatives, and one marketing cooperative representative. In addition, each producer representative must produce a minimum of 50,000 pounds of honey in the United States annually based on the best three-year average of the most recent five calendar years, as certified by producers. The Secretary will appoint members to the Board from nominees submitted in accordance with § 1212.42. The Secretary shall

also appoint an alternate for each member.

[84 FR 1345, Feb. 4, 2019]

§ 1212.41 Term of office.

Each Board member and alternate will serve a three-year term or until the Secretary selects his or her successor. No member or alternate may serve more than two consecutive terms. Each term of office will end on December 31, with new terms of office beginning on January 1.

[84 FR 1345, Feb. 4, 2019]

§ 1212.42 Nominations and appointments.

All nominations to the Board will be made as follows:

(a) All qualified national organizations representing first handler interests will have the opportunity to participate in a nomination caucus and will, to the extent practical, submit as a group a single slate of nominations to the Secretary for the first handler positions and the alternate positions on the Board. If the Secretary determines that there are no qualified national organizations representing first handler interests, individual first handlers who have paid assessments to the Board in the most recent fiscal period may submit nominations. For the initial Board, persons that meet the definition of first handlers as defined in this subpart will certify their qualification and upon certification, if qualified, may submit nominations.

(b) All qualified national organizations representing importer interests will have the opportunity to participate in a nomination caucus and will, to the extent practical, submit as a group a single slate of nominations to the Secretary for importer positions and the importer alternate positions on the Board. If the Secretary determines that there are no qualified national organizations representing importer interests, individual importers who have paid assessments to the Board in the most recent fiscal period may submit nominations.

(c) All qualified national organizations representing producer interests will have the opportunity to participate in a nomination caucus and will,

to the extent practical, submit as a group a single slate of nominations to the Secretary for the producer positions and the producer alternate positions on the Board. If the Secretary determines that there are no qualified national organizations representing producer interests, individual producers may submit nominations to the Secretary. For the initial Board, persons that meet the definition of producer as defined in this subpart will certify such qualification and upon certification, if qualified, may submit nominations.

(d) For the purposes of this subpart, a national honey-marketing cooperative means any entity that is organized under the Capper-Volstead Act (7 U.S.C. 291) or state law as a cooperative and markets honey or honey products in at least 20 states. All national honey-marketing cooperatives that are first handlers will have the opportunity to participate in a nomination caucus and will, to the extent practical, submit as a group a single slate of nominations to the Secretary of persons who serve as an officer, director, or employee of a national honey marketing cooperative for the cooperative position and the alternate position on the Board.

(e) Eligible organizations, cooperatives, producers, first handlers or importers must submit nominations to the Secretary six months before the new Board term begins. At least two nominees for each position to be filled must be submitted.

(f) Qualified national organization representing first handler interests. To be certified by the Secretary as a qualified national organization representing first handler interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

(1) The organization's voting membership must be comprised primarily of first handlers of honey or honey products;

(2) The organization must represent a substantial number of first handlers who market a substantial volume of honey or honey products in at least 20 states;

(3) The organization has a history of stability and permanency and has been in existence for more than one year;

(4) The organization must have as a primary purpose promoting honey first handlers' economic welfare;

(5) The organization must derive a portion of its operating funds from first handlers; and

(6) The organization must demonstrate it is willing and able to further the Act's purposes.

(g) Qualified national organization representing importer interests. To be certified as a qualified national organization representing importer interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

(1) The organization's importer membership must represent at least a majority of the volume of honey or honey products imported into the United States;

(2) The organization has a history of stability and permanency and has been in existence for more than one year;

(3) The organization must have as a primary purpose promoting honey importers' economic welfare;

(4) The organization must derive a portion of its operating funds from importers; and

(5) The organization must demonstrate it is willing and able to further the Act's purposes.

(h) Qualified national organization representing producer interests. To be certified by the Secretary as a qualified national organization representing producer interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

(1) The organization's membership must be comprised primarily of honey producers;

(2) The organization must represent a substantial number of producers who produce a substantial volume of honey in at least 20 states;

(3) The organization has a history of stability and permanency and has been in existence for more than one year;

(4) The organization must have as one of its primary purposes promoting honey producers' economic welfare;

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(5) The organization must derive a portion of its operating funds from producers; and

(6) The organization must demonstrate it is willing and able to further the Act's purposes.

(i) To be certified by the Secretary as a qualified national organization representing first handler, producer or importer interests, an organization must agree to:

(1) Take reasonable steps to publicize to non-members the availability of open Board first handler, producer or importer positions; and

(2) Consider nominating a non-member first handler, producer or importer, if he or she expresses an interest in serving on the Board.

(j) National honey-marketing cooperative. The Secretary can certify that an entity qualifies as a national honey-marketing cooperative, as defined in §1212.42(d). Such an entity shall not be eligible for certification as a qualified national organization representing producer interests.

[73 FR 29397, May 21, 2008, as amended at 84 FR 1345, Feb. 4, 2019]

§ 1212.43 Removal and vacancies.

(a) In the event that any member or alternate of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall become vacant.

(b) The Board may recommend to the Secretary that a member be removed from office if the member consistently refuses to perform his or her duties or engages in dishonest acts or willful misconduct. The Secretary may remove the member if he or she finds that the Board's recommendation shows adequate cause.

(c) A vacancy for any reason will be filled as follows:

(1) If a member position becomes vacant, the alternate for that position will serve the remainder of the member's term. In accordance with §1212.42, the Secretary will request nominations for a replacement alternate and will appoint a nominee to serve the remainder of the term. The Secretary does not have to appoint a replacement if the unexpired term is less than six months.

(2) If both a member position and an alternate position become vacant, in accordance with §1212.42, the Secretary will request nominations for replacements and appoint a member and alternate to serve the remainder of the term. The Secretary does not have to appoint a new member or alternate if the unexpired term for the position is less than six months.

(3) No successor appointed to a vacated term of office shall serve more than two successive three-year terms on the Board.

§ 1212.44 Procedure.

(a) A majority of the Board members will constitute a quorum so long as at least one of the members present is an importer member and one of the members present is a first handler member. An alternate will be counted for the purpose of determining a quorum only if a member from his or her membership class is absent or disqualified from participating. Any Board action will require the concurring votes of a majority of those present and voting; with the exception of the two-thirds vote requirement in §1212.52(f). All votes at meetings will be cast in person. The Board must give timely notice of all Board and committee meetings to members and alternates.

(b) The Board may take action by any means of communication when, in the opinion of the Board chairperson, an emergency requires that action must be taken before a meeting can be called. Any action taken under this procedure is valid only if:

(1) All members and the Secretary are notified and the members are provided the opportunity to vote;

(2) Each proposition is explained accurately, fully, and substantially identically to each member;

(3) With the exception of the two-thirds vote requirement in §1212.52(f), a majority of the members vote in favor of the action; and

(4) All votes are promptly confirmed in writing and recorded in the Board minutes.

§ 1212.45 Reimbursement and attendance.

Board members and alternates, when acting as members, will serve without

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compensation but will be reimbursed for reasonable travel expenses, as approved by the Board, that they incur when performing Board business. The Board may request that alternates attend any meeting even if their respective members are expected to attend or actually attend the meeting.

§ 1212.46 Powers.

The Board shall have the following powers subject to § 1212.80:

(a) Administer this subpart in accordance with its terms and provisions of the Act;

(b) Require its employees to receive, investigate, and report to the Secretary complaints of violations of this part;

(c) Recommend adjustments to the assessments as provided in this part;

(d) Recommend to the Secretary amendments to this part;

(e) Establish, issue, and administer appropriate programs and enter into contracts or agreements with the approval of the Secretary for promotion, research, and information programs and plans including consumer and industry information, and advertising designed to strengthen the honey industry's position in the marketplace and to maintain, develop, and expand domestic and foreign markets for honey and honey products; and

(f) Invest assessments collected and other funds received pursuant to the Order and use earnings from invested assessments to pay for activities carried out pursuant to the Order.

§ 1212.47 Duties.

The Board shall have, among other things, the following duties:

(a) To meet and organize, and to select from among its members a chairperson and such other officers as may be necessary; to select committees and subcommittees from its membership and other industry representatives; and to develop and recommend such rules, regulations, and by-laws to the Secretary for approval to conduct its business as it may deem advisable;

(b) To employ or contract with such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect

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the handling of Board funds through fidelity bonds;

(c) To prepare and submit to the Secretary for approval 60 days in advance of the beginning of a fiscal period, a budget of anticipated expenses in the administration of this part including the probable costs of all programs and plans and to recommend a rate of assessment with respect thereto.

(d) To investigate violations of this part and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of this part.

(e) To establish, issue, and administer appropriate programs and enter into contracts or agreements with the approval of the Secretary for promotion, research, and information including consumer and industry information, and advertising designed to strengthen the honey industry's position in the marketplace and to maintain, develop, and expand domestic and foreign markets for honey and honey products.

(f) To maintain minutes, books, and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it.

(g) To periodically prepare and make public and to make available to first handlers, producers, and importers reports of its activities and, at least once each fiscal period, to make public an accounting of funds received and expended.

(h) To cause its books to be audited by a certified public accountant at the end of each fiscal period and to submit a copy of each audit to the Secretary.

(i) To submit to the Secretary such information pertaining to this part or subpart as he or she may request.

(j) To give the Secretary the same notice of Board meetings and committee meetings that is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting to the Secretary.

(k) To notify first handlers, importers, and producers of all Board meetings through press releases or other means.

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(l) To appoint and convene, from time to time, working committees or subcommittees that may include first handlers, importers, exporters, producers, members of the wholesale or retail outlets for honey, or other members of the honey industry and the public to assist in the development of research, promotion, advertising, and information programs for honey and honey products.

(m) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of plans or activities to effectuate the declared purpose of the Act.

(n) To provide any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government, as represented by the Board, and shall along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Department.

§ 1212.48 Reapportionment of Board membership.

At least once in each 5-year period, but not more frequently than once in each 3-year period, the Board shall:

(a) Review, based on a three-year average, the geographical distribution in the United States of the production of honey and the quantity or value of the honey and honey products imported into the United States; and

(b) If warranted, recommend to the Secretary the reapportionment of the Board membership to reflect changes in the geographical distribution of the production of honey and the quantity or value of the honey and honey products imported into the United States.

EXPENSES AND ASSESSMENTS

§ 1212.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal period, and as may be necessary thereafter; the Board shall prepare and submit to the Department a budget for the fiscal period covering its anticipated expenses and disbursements in administering this subpart. The budget shall allocate five percent (5%) of the Board's anticipated revenue from assessments each fiscal period for production research and research relating to the production of honey.

Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data or at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Department, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Department.

(d) The Board is authorized to incur such expenses, including provision for a reserve, as the Department finds reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Department, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and