

(1) The catastrophic risk protection plan of insurance and the noninsured crop disaster assistance program for a period not to exceed two (2) years; or

(2) Any plan of insurance providing protection in excess of that provided under the catastrophic risk protection plan of insurance for a period not to exceed ten (10) years.

\* \* \* \* \*

3. A new § 400.458 is added to read as follows:

**§ 400.458 Scheme or device.**

(a) In addition to the penalties specified in this part, if a person has knowingly adopted a material scheme or device to obtain catastrophic risk protection, other plans of insurance coverage, or noninsured assistance benefits to which the person is not entitled, has evaded the provisions of the Federal Crop Insurance Act, or has acted with the purpose of evading the provisions of the Federal Crop Insurance Act, the person shall be ineligible to receive any and all benefits applicable to any crop year for which the scheme or device was adopted.

(b) A scheme or device may include, but is not limited to, creating or using another entity, or concealing or providing false information with respect to your interest in the policyholder, to evade:

(1) Suspension, debarment, or disqualification from participation in the program;

(2) The assignment of the nonstandard classification system; or

(3) Ineligibility for a delinquent debt owed to FCIC or the insurance company.

4. A new § 400.459 is added to read as follows:

**§ 400.459 Indebtedness.**

Any person who has provided materially false information or misrepresented any material fact in connection with any program administered under the Act, and is indebted to FCIC or an insurance company arising from such conduct, is ineligible to participate in any program administered under the Act until the debt has been paid in full.

Done in Washington, DC on July 12, 1995.

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 95-17813 Filed 7-19-95; 8:45 am]

BILLING CODE 3410-08-P

**Agricultural Marketing Service**

**7 CFR Parts 1150, 1160, 1200, 1205, 1207, 1208, 1209, 1210, 1211, 1212, 1220, 1230, 1240, 1250, 1280, and 1290**

[FV-94-702FR]

**Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from Research and Promotion Programs**

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

**ACTION:** Final rule.

**SUMMARY:** This rule will consolidate the petition procedures for all research and promotion programs that provide for petitions. This consolidation will eliminate duplication and will reduce costs.

**EFFECTIVE DATE:** August 21, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535-S, Washington, DC 20090-6456; telephone (202) 720-9915.

**SUPPLEMENTARY INFORMATION:** This action is authorized under the Floral Research and Consumer Information Act [7 U.S.C. 4301-4319]; the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act [7 U.S.C. 6801-6814]; the Honey Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 4601-4612]; the Lime Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 6201-6212]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101-6112]; the Pecan Promotion and Research Act of 1990 [7 U.S.C. 6001-6013]; the Potato Research and Promotion Act, as amended [7 U.S.C. 2611-2627]; the Watermelon Research and Promotion Act, as amended [7 U.S.C. 4901-4916], the Egg Research and Consumer Information Act [7 U.S.C. 2701-2718], the Cotton Research and Promotion Act [7 U.S.C. 2101-2118], the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801-4819], the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301-6311], the Sheep Promotion, Research, and Information Act of 1994 [7 U.S.C. 7101-7111], the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501-4513], the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401-6417], and the Wheat and Wheat Foods Research and Nutrition Education Act [7 U.S.C. 3401-3417].

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The acts named above provide that administrative proceedings must be exhausted before parties may file suit in court. A person subject to a research and promotion order or plan (hereinafter referred to as order) may file a petition with the Secretary of Agriculture (Secretary) stating that the order or any provision of the order, or any obligation imposed in connection with the order, is not in accordance with law and requesting a modification of the order or an exemption from the order. The petitioner is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary will make a ruling on the petition. The acts provide that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

**Regulatory Impact Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Since this action is administrative in nature, the Administrator of AMS determined that this rule will have no economic impact on small entities.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35], the information collection requirements contained in the orders covered by the acts have been approved by OMB. This action will not impact any of the information collection requirements under the orders.

**Background**

When Congress authorizes a research and promotion program to be administered by the Department of

Agriculture (Department), the Department conducts the necessary rulemaking, and, if appropriate, a public hearing and a referendum before the program is implemented. One portion of the rulemaking relates to the provisions of the act which requires that a person covered by the program exhaust administrative remedies before filing suit in court. Under these administrative remedies, a person may file a petition with the Secretary to modify or be exempted from the relevant act.

In the past, separate rulemaking has been conducted for each order. As a result, each order has a subpart relating to petition procedures, and the subparts are nearly identical.

In order to promote administrative efficiency, the Department is deleting the individual subparts and creating a new subpart under Part 1200 to cover petition procedures for all of the research and promotion programs that provide for petitions which are administered by AMS. The new subpart will state that it covers all of the existing statutes for research, promotion, and consumer information acts which provide for petitions that are established as public law by Congress. It will be applicable for the Pecan Promotion and Research Act of 1990, the Wheat and Wheat Foods Research and Nutrition Education Act, and the Floral Research and Consumer Information Act if a program is implemented for those programs in the future. In addition, it will be applicable for the Sheep Promotion, Research, and Information Act of 1994 if an order is adopted. Also, it will be applicable for the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act.

The creation of the new subpart will eliminate the need for one rulemaking action (a proposed rule and a final rule) for each new program and thus reduce costs for the Department as well as for the research and promotion boards and councils which pay user fees to cover the Department's costs.

This rule removes Part 1290 in its entirety because there is no active program under the Floral Research and Consumer Information Act of 1981.

The provisions of the Administrative Procedure Act concerning notice and opportunity for comment on agency rulemaking [5 U.S.C. 553] do not apply to the promulgation of agency rules of practice. Accordingly, this action is made effective upon publication in the **Federal Register**. Furthermore, this final rule makes technical revisions to the existing rules of practice, which are uniform for all applicable research and promotion programs; the rules are

already applicable to those programs that are newly specified in the rules because of the existing definition of the term "Act"; no substantive rule or rule change is involved; and these procedures are patterned directly after existing procedures that are presently in use.

#### List of Subjects

##### 7 CFR Part 1150

Dairy products, Reporting and recordkeeping requirements, Research.

##### 7 CFR Part 1160

Milk, Fluid milk products, Promotion.

##### 7 CFR Part 1200

Administrative practice and procedure, Cotton, Cut Flowers, Cut Greens, Dairy, Eggs, Floral products, Fluid milk, Honey, Limes, Marketing agreements, Mushrooms, Pecans, Pork, Potatoes, Sheep, Soybeans, Watermelons, Wheat, Wheat foods.

##### 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Reporting and recordkeeping requirements.

##### 7 CFR Part 1207

Advertising, Agricultural research, Potatoes, Reporting and recordkeeping requirements.

##### 7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Cut flowers, Cut greens, Promotion, Reporting and recordkeeping requirements.

##### 7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

##### 7 CFR Part 1210

Administrative practice and procedure, Advertising, Agricultural research, Reporting and recordkeeping requirements, Watermelons.

##### 7 CFR Part 1211

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreements, Pecans, Promotion, Reporting and recordkeeping requirements.

##### 7 CFR Part 1212

Administrative practice and procedure, Advertising, Limes, Marketing agreements, Reporting and recordkeeping requirements.

##### 7 CFR Part 1220

Agricultural research, Reporting and recordkeeping requirements, Soybeans.

##### 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Meat and meat products, Reporting and recordkeeping requirements.

##### 7 CFR Part 1240

Advertising, Agricultural research, Honey, Imports, Reporting and recordkeeping requirements.

##### 7 CFR Part 1250

Administrative practice and procedure, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

##### 7 CFR Part 1280

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Sheep and sheep products, Reporting and recordkeeping requirements.

##### 7 CFR Part 1290

Administrative practice and procedure, Advertising, Agricultural research, Plants.

For the reasons set forth in the preamble, 7 CFR Parts 1150, 1160, 1200, 1205, 1207, 1208, 1209, 1210, 1211, 1212, 1220, 1230, 1240, 1250, 1280, and 1290 are amended to read as follows:

#### PART 1150—DAIRY PROMOTION PROGRAM

1. The authority citation for Part 1150 continues to read as follows:

**Authority:** 7 U.S.C. 4501–4513.

2. In Part 1150, Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from an Order is removed.

#### PART 1160—FLUID MILK PROMOTION PROGRAM

3. The authority citation for Part 1160 continues to read as follows:

**Authority:** 7 U.S.C. 6401–6417.

4. In Part 1160, Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from an Order is removed.

#### PART 1200—RULES OF PRACTICE AND PROCEDURE GOVERNING PROCEEDINGS UNDER RESEARCH, PROMOTION, AND EDUCATION PROGRAMS

5. The authority citation for 7 CFR Part 1200 is revised to read as follows:

**Authority:** 7 U.S.C. 2111; 2620; 2713; 3409; 4313; 4509; 4609; 4814; 4909; 6008; 6106; 6206; 6306; 6410; 6807; and 7106.

6. Part 1200 is amended by adding a new subpart to read as follows:

**Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Research, Promotion, and Education Programs**

**Sec.**

1200.50 Words in the singular form.

1200.51 Definitions.

1200.52 Institution of proceeding.

**Authority:** 7 U.S.C. 2111; 2620; 2713; 3409; 4313; 4509; 4609; 4814; 4909; 6008; 6106; 6206; 6306; 6410; 6807; and 7106.

**Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Research, Promotion and Education Programs**

**§ 1200.50 Words in the singular form.**

Words in this subpart in the singular form shall be deemed to import the plural, and *vice versa*, as the case may demand.

**§ 1200.51 Definitions.**

As used in this subpart, the terms as defined in the acts shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term *Act* means Floral Research and Consumer Information Act [7 U.S.C. 4301–4319]; the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act [7 U.S.C. 6801–6814]; the Honey Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 4601–4612]; the Lime Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 6201–6212]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]; the Pecan Promotion and Research Act of 1990 [7 U.S.C. 6001–6013]; the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627]; the Watermelon Research and Promotion Act, as amended [7 U.S.C. 4901–4916], the Egg Research and Consumer Information Act [7 U.S.C. 2701–2718], the Cotton Research and Promotion Act [7 U.S.C. 2101–2118], the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801–4819], the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301–6311], the Sheep Promotion, Research, and Information Act of 1994 [7 U.S.C. 7101–7111], the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501–4513], the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401–6417], and the Wheat and Wheat Foods Research

and Nutrition Education Act [7 U.S.C. 3401–3417].

(b) *Department* means the U.S. Department of Agriculture.

(c) *Secretary* means the Secretary of Agriculture of the United States, or any 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.

(d) *Judge* means any administrative law judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved.

(e) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated, or may hereafter be delegated, to act in the Administrator's stead.

(f) *Order* means any order or any amendment thereto which may be issued pursuant to the Act. The term *order* shall include plans issued under the Acts listed in paragraph (a) of this section.

(g) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order.

(h) *Proceeding* means a proceeding before the Secretary arising under section 1957 of the Act.

(i) *Hearing* means that part of the proceedings which involves the submission of evidence.

(j) *Party* includes the U.S. Department of Agriculture.

(k) *Hearing clerk* means the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C.

(l) *Decision* means the judge's initial decision and includes the judge's:

(1) Findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis thereof;

(2) Order; and

(3) Rulings on findings, conclusions and orders submitted by the parties; and

(m) *Petition* includes an amended petition.

**§ 1200.52 Institution of proceeding.**

(a) *Filing and service of petitions.* Any person subject to an order desiring to complain that such order or any provision of such order or any obligation imposed in connection with an order is not in accordance with law, shall file with the hearing clerk, in quintuplicate, a petition in writing

addressed to the Secretary. Promptly upon receipt of the petition in writing the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petitions.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application of such terms or provisions, which are complained of;

(3) A full statement of the facts, avoiding a mere repetition of detailed evidence, upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Requests for the specific relief which the petitioner desires the Secretary to grant; and

(6) An affidavit by the petitioner, or, if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for purposes of delay.

(c) *A motion to dismiss a petition: filing, contents, and responses to a petition.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the Act or with requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk a motion to dismiss the petition, or any portion of the petition, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds for objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition,

shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the motion to the judge for the judge's consideration.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from the Order shall be governed by §§ 900.52(c)(2) through 900.71 of the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders. However, each reference to *marketing order* in the title shall mean *order*.

#### **PART 1205—COTTON RESEARCH AND PROMOTION**

7. The authority citation for Part 1205 continues to read as follows:

**Authority:** 7 U.S.C. 2101-2118.

8. In Part 1205, Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Orders is removed.

#### **PART 1207—POTATO RESEARCH AND PROMOTION PLAN**

9. The authority citation for Part 1207 continues to read as follows:

**Authority:** 7 U.S.C. 2611-2627.

10. In Part 1207, Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From Plans is removed.

#### **PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER**

11. The authority citation for Part 1209 continues to read as follows:

**Authority:** 7 U.S.C. 6101-6112.

12. In Part 1209, Subpart D—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Mushroom Promotion, Research, and Consumer Information Order is removed.

#### **PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN**

13. The authority citation for Part 1210 continues to read as follows:

**Authority:** 7 U.S.C. 4901-4916.

14. In Part 1210, Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Watermelon Research and Promotion Plan is removed.

#### **PART 1211—PECAN PROMOTION AND RESEARCH PLAN**

15. The authority citation for Part 1211 continues to read as follows:

**Authority:** 7 U.S.C. 6001-6013.

16. In Part 1211, Subpart C—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Plan is removed and reserved.

#### **PART 1212—LIME RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER**

17. The authority citation for Part 1212 continues to read as follows:

**Authority:** 7 U.S.C. 6201-6212.

18. In Part 1212, Subpart C—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From an Order is removed.

#### **PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION**

19. The authority citation for Part 1220 continues to read as follows:

**Authority:** 7 U.S.C. 6301-6311.

20. In Part 1220, Subpart C—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Soybean Promotion and Research Order is removed.

#### **PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION**

21. The authority citation for Part 1230 continues to read as follows:

**Authority:** 7 U.S.C. 4801-4819.

22. In Part 1230, Subpart C—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Pork Promotion, Research, and Consumer Information Order is removed.

#### **PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER**

23. The authority citation for Part 1240 continues to read as follows:

**Authority:** 7 U.S.C. 4601-4612.

24. In Part 1240, Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Honey Research, Promotion, and Consumer Information Order is removed.

#### **PART 1250—EGG RESEARCH AND PROMOTION**

25. The authority citation for Part 1250 continues to read as follows:

**Authority:** 7 U.S.C. 2701-2718.

26. In Part 1250, Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Orders is removed.

#### **SUBPART 1290—[REMOVED]**

27. Part 1290 is removed.

Dated: July 10, 1995.

**Lon Hatamiya,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 95-17325 Filed 7-19-95; 8:45 am]

BILLING CODE 3410-02-P

#### **DEPARTMENT OF JUSTICE**

#### **8 CFR Parts 103, 244, and 299**

[EOIR No. 107F; AG Order No. 1978-95]

RIN 1125-AA10

#### **Executive Office for Immigration Review; Application for Suspension of Deportation, Form EOIR-40**

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations to reflect the change in responsibility for the Form I-256A, Application for Suspension of Deportation, from the Immigration and Naturalization Service (Service) to the Executive Office for Immigration Review (EOIR). As a result of this change in responsibility, the form number for the Application for Suspension of Deportation has been changed from I-256A to EOIR-40. This final rule is necessary to ensure that the public uses the correct form when applying for suspension of deportation. **EFFECTIVE DATE:** This final rule is effective July 20, 1995.

**FOR FURTHER INFORMATION CONTACT:** Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone: (703) 305-0470.

**SUPPLEMENTARY INFORMATION:** In recognition that an application for