

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1240

[FV-96-704PR]

#### Honey Research, Promotion, and Consumer Information Order; Proposed Amendment

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule gives notice of a proposed amendment to the Honey Research, Promotion, and Consumer Information Order (Order) and its rules and regulations issued thereunder. The amendment would require producers to maintain, retain, and make available to the Honey Board and the Secretary of Agriculture such books and records which are appropriate or necessary to the administration or enforcement of the Honey Research, Promotion, and Consumer Information Act, as amended (Act).

**DATES:** Comments must be received by May 6, 1997.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule to: Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535-S, Washington, DC 20090-6456. Three copies of all written materials should be submitted, and they will be made available for public inspection in the Research and Promotion Branch during regular working hours. All comments should reference Docket Number FV-96-704PR and the date and the page number of this issue of the Federal Register. Also, pursuant to the Paperwork Reduction Act, send comments regarding the accuracy of the burden estimate, ways to minimize the burden, or any other aspect of this collection of information to the above address.

#### FOR FURTHER INFORMATION CONTACT:

Richard Schultz at the above address, telephone (202) 720-5976 or (888) 720-9917 (toll free), or fax (202) 205-2800.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under the Honey Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 4601 *et seq.*], hereinafter referred to as the Act. This action would amend the Honey Research, Promotion, and Consumer Information Order (Order) [7 CFR Part 1240] to reflect an amendment to the Act as specified in the Federal Agriculture Improvement and Reform Act of 1996 (FAIR) [Pub. L. 104-127, April 4, 1996].

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 10 of the Act, a person subject to an order may file a petition with the Secretary of Agriculture (Secretary) stating that such order, any provision of such order, or any obligation imposed in connection with such order is not in accordance with law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has a principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided that a complaint is filed within 20 days after the date of entry of the ruling.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

In accordance with the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) is

required to examine the impact of the proposed rule on small entities.

Congress recently amended the Act by inserting the term "producer" into Section 9(f). Under Section 9(f) of the Act, handlers, importers, producer-packers, and now producers are required to maintain and make available to the Honey Board (Board) and the Secretary such books and records which are appropriate or necessary to the administration or enforcement of the Act or of any order or regulation issued pursuant to the Act. The primary intent of the amendment is to require producers to maintain and make available books and records to facilitate enforcement of the Act. The estimated cost to the 5,000 producers who would be responsible for maintaining and retaining such information would be \$25,000 or \$5.00 per producer. There are approximately 5,000 producers, 510 producer-packers, 350 importers, and 145 handlers who are currently subject to the provisions of the Order.

The majority of these producers may be classified as small agricultural producers. Small agricultural producers are defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$500,000. In 1995, there were an estimated 4,960 producers who had annual receipts of less than \$500,000 and 40 producers who had annual receipts of more than \$500,000.

U.S. honey production in 1995 totaled 210.4 million pounds. California produced 19 percent of the total, followed by North Dakota (11 percent), South Dakota (10 percent), Florida (9 percent), and Minnesota (6 percent). Forty-four other States accounted for the remaining 45 percent of domestic production. The value in sales in 1995 was \$135.5 million.

In 1995, exports of U.S. honey packaged for retail sales totaled nearly 3.3 million pounds, with a value of \$2.8 million. Bulk honey exports totaled over 6 million pounds, with a value of \$4.9 million. Sizeable quantities of honey are exported to a wide range of countries in Europe, the Middle East, and the Far East.

Also during this period, honey imports into the United States totaled about 88.6 million pounds. China, Argentina, and Canada had about equal shares and together accounted for about 92 percent of the honey imported into

the United States. About 6 percent came from Mexico, and the remainder came from an assortment of countries around the world. The value of imports was about \$47.1 million.

The impact of this proposed rule on small entities would be minimal due to its focus on recordkeeping. This recordkeeping requirement is consistent with prudent business practices and should not impose any undue costs or significant burdens on a vast majority of the small entities affected. It is anticipated that a significant number of these small entities currently practice such recordkeeping for commercial and/or tax purposes.

While the AMS has performed this initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities, in order to have additional data that may be helpful for further analysis of the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule and information on the expected benefits and costs.

#### Paperwork Reduction Act

In accordance with the OMB regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the recordkeeping requirement contained in this rule will be submitted to OMB for approval.

*Title:* National Research, Promotion, and Consumer Information Programs.

*OMB Number:* 0581-0093.

*Expiration Date of Approval:* October 31, 1997.

*Type of Request:* Revision of currently approved information collection for research and promotion programs.

*Abstract:* The recordkeeping requirement in this request is essential to carry out an amendment to the Act.

The Order currently imposes recordkeeping requirements on handlers, importers, and producer-packers. Such persons are required to maintain and retain their books and records for at least two years beyond the marketing year of their applicability. In conformance with the Act, as amended in the FAIR, producers would also be required to maintain and retain books and records. It is anticipated that producers currently maintain and retain such books and records for commercial and/or tax purposes. Therefore, this recordkeeping requirement is consistent with prudent business practices and should not impose any undue costs or

significant burdens on a vast majority of producers.

The estimated cost to the 5,000 producers who would be responsible for maintaining and retaining their books and records would be \$25,000 or \$5.00 per producer. This total has been estimated by multiplying 2,500 (total burden hours) by \$10.00, a sum deemed to be reasonable should the producers be compensated for their time.

The recordkeeping requirement contained in this rule is:

(1) *A requirement to maintain books and records to facilitate administration or enforcement of the Order.*

*Estimate of Burden:* Public recordkeeping burden for keeping this information is estimated to average .5 hours per recordkeeper maintaining such records.

*Respondents (Recordkeepers):* Producers.

*Estimated Number of Respondents (Recordkeepers):* 5,000.

*Estimated Number of Responses per Respondent (Recordkeepers):* 1.

*Estimated Total Annual Burden on Respondents (Recordkeepers):* 2,500 hours.

Comments are invited on: (1) Whether the proposed recordkeeping is necessary for administration or enforcement of the Act; (2) the accuracy of the AMS's estimate of the recordkeeping burden, including the validity of the methodology and assumption used; (3) ways to enhance the quality, utility, and clarity of the recordkeeping requirement; and (4) ways to minimize the burden of the recordkeeping requirement on those who are affected, including the use of appropriate automated, electronic, mechanical, or other technology collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-0093, Docket Number FV-96-704PR, and the date and page number of this issue of the Federal Register. Comments should be sent to Richard Schultz at the address listed above by May 6, 1997. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized in the request for OMB approval and included in the request for OMB approval.

#### Background

This proposed rule invites comments on amending the Order and its rules and regulations to reflect an amendment to the Act requiring producers to maintain and make available to the Board, the administrative body appointed by the Secretary to operate the Order, and the

Secretary such books and records which are appropriate or necessary to the administration or enforcement of the Act [7 U.S.C. 4601 *et seq.*]. The Order needs to be amended to reflect the amendment to the Act. Therefore, this rule would add to the Order and its rules and regulations this requirement. Pursuant to § 1240.52 of the Order, all information obtained from these books and records would be kept confidential.

This action would amend sections 1240.41 and 1240.51 of the Order and sections 1240.120, 1240.121, and 1240.122 of the rules and regulations under the Order. It would also correct a paragraph reference in § 1240.41 of the Order, remove and amend § 1240.106 and § 1240.116 of the rules and regulations under the Order, respectively.

Section 1240.41(h) of the Order currently provides that should a first handler or the Secretary fail to collect an assessment from a producer, the producer shall be responsible for the payment of assessment to the Board. The amended paragraph would add that producers shall maintain records for their honey produced.

Section 1240.41(j) of the Order currently makes incorrect reference to paragraph (h) rather than to paragraph (i) of this section. The corrected paragraph would change this reference from paragraph (h) to paragraph (i).

Section 1240.51 of the Order currently provides that handlers, importers, producer-packers, or any persons who receive an exemption from assessments shall maintain and make available for inspection by the Board or the Secretary such books or records as are necessary to carry out the provisions of the Order and the regulations issued thereunder, including such records as are necessary to verify any required reports. It further provides that such records shall be maintained for two years beyond the first period of their applicability. The amended paragraph would add producers to those covered by this recordkeeping requirement. It would also clarify that such records shall be maintained for at least two years beyond the marketing year of their applicability rather than for two years beyond the first period of their applicability.

Section 1240.106 of the rules and regulations provides that communications concerning the program should be addressed to the National Honey Board. Since the address in the text of the section is subject to change, it is preferable that it be deleted to avoid confusion. The correct address for the National Honey Board is 390 Lashley Street, Longmont, Colorado 80501. Therefore, the language

in § 1240.106 is obsolete and would be removed.

Section 1240.116(b) of the rules and regulations provides that each first handler and producer-packer shall pay their required assessment to the Board at the address referenced in Section 1240.106. Since § 1240.106 is obsolete and would be removed, reference to the Board's address in § 1240.116(b) would also be removed.

Section 1240.120 of the rules and regulations currently provides that first handlers, producer-packers, importers, or any persons who receive an exemption from assessments are required to make reports pursuant to the Order and shall maintain and retain such reports for at least two years beyond the marketing year of their applicability. The amended section would designate the existing text in this section as paragraph (a) and add a new paragraph (b). The new paragraph would provide that producers shall maintain and retain books and records for at least two years beyond the marketing year of their applicability. Such books and records shall include, but not be limited to, information on annual sales and production.

Section 1240.121 of the rules and regulations currently provides that first handlers, producer-packers, importers, or any persons who receive an exemption from assessments and are required to make reports pursuant to the Order shall make available to the Board or the Secretary such records as are appropriate and necessary to verify reports required under the Order. The amended section would designate the existing text in this section as paragraph (a) and add a new paragraph (b). The new paragraph would provide that producers are required to maintain and retain books and records pursuant to the Order and shall make available to the Board or the Secretary such records as are appropriate and necessary to verify the information in § 1240.120(b) of the rules and regulations.

Section 1240.122 of the rules and regulations currently provides that all information obtained from the books, records, and reports of handlers, producer-packers, or any persons who receive an exemption from assessments shall be kept confidential and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential. The paragraph would be amended to indicate that information obtained from producers would be covered by this confidentiality provision. Reference to all information with respect to refunds of assessments made to individual producers and

importers would be removed from the paragraph. In 1991, following amendment of the Act, producers and importers voted to terminate the authority for producers and importers to obtain a refund of assessments. Therefore, such language is now obsolete and would be removed.

All written comments received in response to this proposed rule by the date specified herein will be considered prior to the issuance of any final rule on this action.

#### List of Subjects in 7 CFR Part 1240

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

For the reasons set forth in the preamble, 7 CFR Part 1240 is proposed to be amended as follows:

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

1. The authority citation for 7 CFR Part 1240 continues to read as follows:

Authority: 7 U.S.C. 4601–4612.

2. In § 1240.41, paragraph (h) is revised to read as follows:

#### **§ 1240.41 Assessments.**

\* \* \* \* \*

(h) Should a first handler or the Secretary fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board. The producer shall maintain records for the honey produced by said producer.

\* \* \* \* \*

#### **§ 1240.41 [Amended]**

3. In § 1240.41, paragraph (j) is amended by removing the words “paragraph (h)” and adding in their place the words “paragraph (i)”.

#### **§ 1240.51 [Amended]**

4. In § 1240.51, the word “producer,” is added following the word “importer” and the words “two years beyond the first period” are removed and the words “at least two years beyond the marketing year” are added in their place.

#### **§ 1240.106 [Removed and reserved.]**

5. Section 1240.106 is removed and reserved.

#### **§ 1240.116 [Amended]**

6. In § 1240.116, paragraph (b), the words “at the address referenced in § 1240.106,” are removed.

#### **§ 1240.120 [Amended]**

7. In § 1240.120, the existing undesignated text is designated as

paragraph (a) and a new paragraph (b) is added to read as follows:

#### **§ 1240.120 Retention period for records.**

\* \* \* \* \*

(b) Each producer required to maintain books and records pursuant to this subpart shall maintain and retain books and records for at least two years beyond the marketing year of their applicability. Such books and records shall include, but not be limited to, information on annual production and sales. Information on annual sales shall include such information as the name and address of each handler, the quantity sold to the handler, and the date of sale.

8. In § 1240.121 the existing undesignated text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

#### **§ 1240.121 Availability of records.**

\* \* \* \* \*

(b) Each producer who is required to maintain books and records pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours such books and records as are appropriate and necessary to verify the information in § 1240.120(b) of this subpart.

#### **§ 1240.122 [Amended]**

9. In § 1240.122, the word “producers,” is added following the word “importers” and the words “and all information with respect to refunds of assessments made to individual producers and importers” are removed.

Dated: February 28, 1997.

Kenneth C. Clayton,

*Acting Administrator.*

[FR Doc. 97–5590 Filed 3–6–97; 8:45 am]

BILLING CODE 3410–02–P

### **Rural Telephone Bank**

#### **7 CFR Part 1610**

### **Rural Utilities Service**

#### **7 CFR Parts 1735, 1737, 1739, and 1746**

### **Rural Telephone Bank and Telecommunications Program Loan Policies, Types of Loans, Loan Requirements**

**AGENCY:** Rural Utilities Service and Rural Telephone Bank, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS) proposes to amend its regulations to incorporate changes to the telecommunications loan program