



Federal Register

**Monday,
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Part II

Department of Agriculture

**Agricultural Marketing Service
7 CFR Part 1240**

**Honey Research, Promotion, and
Consumer Information Order; Proposed
Rule**

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 1240**

[FV-00-701 PR1]

RIN 0581-AB84

Honey Research, Promotion, and Consumer Information Order**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Proposed rule.

SUMMARY: The U.S. Department of Agriculture (the Department or USDA) is seeking comments regarding proposed amendments to the Honey Research, Promotion, and Consumer Information Order (Order). These amendments are authorized by amendments to the Honey Research, Promotion, and Consumer Information Act (Act). The Order needs to be amended as a result of these changes to the Act.

The following amendments must be approved by honey producers, producer-packers, handlers, and importers voting in a referendum to become effective: a requirement for the Honey Board (Board) to reserve 8 percent of its funds annually for beekeeping and production research; authority for the Board to develop recommendations for purity standards and an inspection and monitoring system to enhance the image of honey and honey products; the addition of two handlers who are also importers to the Board; a decrease in the producer assessment from 1 cent per pound to 0.75 cents per pound; the addition of an assessment of 0.75 cents per pound on handlers; and an increase in the assessment rate from 1 cent per pound to 1.5 cents per pound on imports.

The following major (and other minor) amendments would become effective after the referendum, regardless of the outcome: changing the two importer/exporter positions to two importer positions on the Board; eliminating the public member position; revising nomination and eligibility requirements; requiring that at least 50 percent of the Board members be honey producers; providing authority for the Board to develop a voluntary quality assurance program with enforcement by USDA; eliminating the requirement to file for an exemption under the program; and removing obsolete language.

DATES: Comments must be received by April 28, 2000.**ADDRESSES:** Interested persons are invited to submit written comments

concerning the proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535 South Building, Washington, DC 20250-0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this proposed rule may be found at: www.ams.usda.gov/fv/rpdocketlist.htm. Also, pursuant to the Paperwork Reduction Act (PRA), send comments regarding the merits of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the collection of information under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Karen T. Comfort or John D. Reilly, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535 South Building, Washington, DC 20250-0244; telephone (202) 720-9915; facsimile (202) 205-2800.

SUPPLEMENTARY INFORMATION: This proposal to amend the Honey Research, Promotion, and Consumer Information Order (Order) [7 CFR Part 1240] is issued pursuant to amendments to the Honey Research, Promotion, and Consumer Information Act [Pub. L. 98-590; enacted October 30, 1984; 7 U.S.C. 4601 through 4613, as amended], hereinafter referred to as "Act." The amendments to the Act were made by the Agricultural Research, Extension, and Education Reform Act of 1998 [Pub. L. 105-185, enacted June 23, 1998]. The proposed rule for conducting a referendum on amendments to the Order will be published in the **Federal Register** in the near future.

Executive Order 12988

This proposed 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.

Under Section 10 of the Act, a person subject to the Order may file, within a period prescribed by the Secretary of Agriculture (Secretary), a written petition with the Secretary stating that the Order, or any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and request a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed not later than two years after: (1) the effective date of the Order, provision, or obligation challenged in the petition; or (2) the date on which the petitioner became subject to the Order, provision, or obligation challenged in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on a petition, which will be final if the petition is in accordance with the law.

The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Executive Order 12866

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

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

There are approximately 3,285 producers, 400 producer-packers, and 348 importers who pay assessments under the Order, and 121 handlers who are currently subject to the provisions of the Act. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$5 million and small agricultural producers are defined as those having annual receipts of not more than

\$500,000. The majority of honey producers, producer-packers, importers, and handlers may be classified as small entities.

According to USDA estimates, last published in 1995, the number of beekeepers in the U.S. varies from 139,000 to 212,000. Approximately 95 percent of these beekeepers are hobbyists with fewer than 25 colonies. Another 4 percent are part-time or "sideliner" beekeepers with 25 to 299 colonies. Commercial beekeepers owning 300 or more colonies number approximately 2,000.

Based on the latest available statistics from USDA's National Agricultural Statistics Service, 2.63 million colonies produced approximately 220 million pounds of honey in the United States in 1998. This represented a 12 percent increase in production from 1997.

According to Board historical data, 3,285 producers paid over \$1.8 million in assessments under the Act and Order in 1998. This amount represented 58 percent of the Board's revenue for the period. In 1998, 348 importers of honey paid nearly \$1.4 million in assessments, and the eight largest importers paid approximately 75 percent of this amount. The countries of origin of imported honey include Argentina, Canada, China, and Mexico.

Based on the latest available information, U.S. honey production in 1998 totaled 220 million pounds, a 24 million-pound increase from 1997. California, North Dakota, Florida, South Dakota, Montana, and Minnesota accounted for 60 percent of production. Forty-three other states accounted for the remaining 40 percent of domestic production. The value of production in 1998 was \$144.3 million, down from \$147.8 million in 1997.

In 1998, exports of U.S. honey packaged for retail sales totaled nearly 3.9 million pounds, with a value of \$3.8 million. Bulk honey exports totaled over 6.5 million pounds, with a value of \$5.0 million. Sizable quantities of honey are exported to a wide range of countries in Europe, the Middle East, and the Far East. U.S. per capita consumption of honey was about 1.2 pounds per person in 1998, about the same as in 1997.

Also during this period, honey imports into the U.S. totaled 132.4 million pounds, about 35 million pounds less than in 1997. Argentina accounted for 53 percent of the quantity and 50 percent of the value of imports in 1998. China accounted for 23 percent of the quantity of imports and 21 percent of the value. About 12 percent of the quantity and 16 percent of the total value of imports came from Canada; 6 percent of the quantity and 5

percent of the value came from Mexico. The remainder came from an assortment of countries around the world. The value of the U.S. imports in 1998 was about \$77.8 million, down 35 percent from the year before.

The proposed amendments would add a \$0.0075 per pound assessment on honey handlers, decrease the producer assessment from \$0.01 to \$0.0075 per pound, and increase the assessment on imported honey from \$0.01 to \$0.015 per pound. An assessment of \$0.0075 per pound represents 1.1 percent of the 1998 average price of honey of \$0.655 per pound (wholesale). Basing projections on the assessments remitted or reported for each group over the 5-year period from 1995 to 1999, the Board would collect approximately \$4,860,000 in assessments annually, a \$1.6 million increase in revenue from assessments collected in 1998, if the amendments are approved. The Transaction Report form used in the assessment collection process would have to be revised to reflect the new assessment rates.

The proposed amendments also would require producers to maintain and make available to the Board and the Secretary such books and records which are appropriate or necessary for the administration or enforcement of the honey research and promotion program. Presently, only handlers, importers, and producer-packers are required to maintain these records. The primary intent of this amendment is to require producers to maintain and make available books and records to facilitate enforcement of the Act.

The proposed changes to the Order would add authority for the Board to require producers to maintain records and, at such time and such manner that the Board may prescribe, report information pertaining to the quantity of honey produced and the total number of bee colonies maintained. Under the current Order, the Board's authority to request reports extends only to handlers, importers, and producer-packers. It is most likely that this information would be obtained from producers through periodic audits.

Based on this expanded reporting authority, there are also plans to collect information periodically from producers for statistical purposes. At this time, Board plans are tentative on how and when producers are to report the prescribed statistical information due to mailing costs and certain other factors relating to the content and design of the proposed information collection. Such form or mailer for collecting the information will be submitted to OMB

for approval prior to its use and the industry will be notified.

The amendments to the Order in this proposal would also reduce the reporting burden for certain producers, producer-packers, handlers, and importers who qualify for exemption from assessment based on the quantity of honey or honey products produced, handled, or imported. Pursuant to the 1998 changes to the Act, the Order would no longer require individuals to file an application with the Board in order to attain exempt status.

The recordkeeping and reporting requirements related to the proposed amendments to the Order are designed to minimize the burden on producers, producer-packers, handlers, and importers. In addition, any information collection that cannot occur through forms already in use would pose a minimal additional burden.

The estimated total annual cost of maintaining records and providing the information to the Board and USDA by an estimated 5,870 respondents (5,000 producers, 400 producer-packers, 121 handlers, 348 importers, and 1 cooperative representative) would be \$40,775 or \$5.03 per producer, \$31.03 per producer-packer, \$26.36 per handler, \$0.11 per importer, and \$5.00 per cooperative representative, and represents an overall increase in burden for each of these groups.

The impact of the recordkeeping requirement provided for in this proposed rule on small entities would be minimal. 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.

AMS has performed the initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. However, in order to have additional data that may be helpful in evaluating the effects of this rule on small entities, we are inviting comments concerning the potential effects of this rule. 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 Office of Management and Budget (OMB) regulation [5 CFR 1320] which

implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that may be imposed based on the proposed amendments to this Order have been submitted to OMB for approval.

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

OMB Number: 0581-0093.

Expiration Date of Approval: November 30, 2000.

Type of Request: Revision of currently approved information collections for advisory committees and boards and for research and promotion programs.

Abstract: The proposed recordkeeping and information collection requirements are essential to carry out the intent of the Act, as amended.

In addition, there would also be a new burden on handlers voting for the first time in the upcoming referendum. The referendum ballot, which represents the information collection requirement relating to the referendum, is addressed in a proposed rule on referendum procedures which will be published in the **Federal Register** in the near future.

The amendments to the Order contained in this proposed rule would increase the recordkeeping burden on producers. The Order currently requires handlers, importers, and producer-packers to retain their books and records for at least two years beyond the marketing year of their applicability. The Order would be changed to conform to the Act, as amended, by also requiring producers to maintain and retain books and records for two years. It is anticipated that producers already maintain and retain the books and records which contain this information 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 proposed changes to the Order would add authority for the Board to require producers to maintain records and, at such time and such manner that the Board may prescribe, report information pertaining to the quantity of honey produced and the total number of bee colonies maintained. Under the current Order, the Board's authority to request reports extends only to handlers, importers, and producer-packers. It is most likely that this information would be obtained from producers through periodic audits.

Based on this expanded reporting authority, there are also plans to collect information periodically from producers for statistical purposes. At this time, Board plans are tentative on how and

when producers are to report the prescribed statistical information due to mailing costs and certain other factors relating to the content and design of the proposed information collection.

If approved by voters in the referendum, the amended Order would impose a new \$0.0075 per pound assessment on handlers of honey and honey products, decrease the producer assessment from \$0.01 to \$0.0075 per pound, and increase the assessment on imported honey and honey products from \$0.01 to \$0.015 per pound. If the amendments are approved in the referendum, the Transaction Report form, which is currently used to report purchase and assessment information, would have to be modified to reflect the new assessment rates.

Information provided on the Transaction Report is collected under OMB No. 0581-0093. There would be a slight increase in the reporting burden for handlers and producer-packers in order to complete additional assessment information covering their handling activity on the Transaction Report. However, the added reporting burden would be minimal. The extra information to be collected represents a small portion of the total information that handlers and producer-packers are already required to fill out and submit on the same form for each purchase.

The background information form used by the Secretary to determine if nominees to the Board are eligible to serve would be revised and submitted as a new form (AMS-755). It would be added to the information collection under OMB No. 0581-0093. This form is completed and submitted to USDA by those persons nominated for member or alternate positions on the Board.

To conform to the 1998 amendments to the Act, the proposed changes to the Order would include revised qualification requirements for serving on the Board. This information would be collected on the Board's Candidate Profile questionnaire (No. 4 below), and would be used by the Board's staff and the National Honey Nominations (Committee) to determine the qualifications of candidates to the Board. The Candidate Profile form would be submitted as a new form and added to the information collection under OMB No. 0581-0093. It is anticipated that the basic background information to be collected would be readily accessible or otherwise maintained from records currently maintained by those persons who would be candidates to serve on the Board.

It should be noted that the amendments to the Order contained in this proposed rule would reduce the

reporting burden for those producers, producer-packers, and importers who previously have been required to file an application with the Board in order to qualify for exemption from assessment. Based on the changes to the Act in 1998, persons subject to the Act would no longer be required to file an application for exempt status.

The estimated total annual cost of maintaining records and providing the information to the Board and USDA under this rulemaking action by an estimated 5,870 respondents (5,000 producers, 400 producer-packers, 121 handlers, 348 importers, and 1 cooperative representative) would be \$40,775 or \$5.03 per producer, \$31.03 per producer-packer, \$26.36 per handler, \$0.11 per importer, and \$5.00 per cooperative representative.

The new recordkeeping requirement involving 2,700 hours for producers and producer-packers would be added to the program's recordkeeping burden under OMB No. 0581-0093. The previously approved recordkeeping burden totals 12,525 hours. This total is a miscalculation due to an overstatement in the number of respondents. Based on recalculation of the previous burden, the new annual recordkeeping burden would equal 5,451 hours, after including the additional 2,700 hours.

The estimated annual burden of 1,355 hours in providing additional information on the Transaction Report would be added to the previous burden under OMB No. 0581-0093. The previously approved burden totals 9,100 hours. However, this total is a miscalculation due to an overstatement in the number of respondents. Based on recalculation of the previous burden, the estimated new annual burden for completion of the Transaction Report would equal 8,128 hours, after including the additional 1,355 hours.

The estimated annual burden of 10 hours for completing the background information form (AMS-755) represents a new burden to be reported under OMB No. 0581-0093. The removal of the exemption application requirement would eliminate the estimated annual burden of 41.5 hours as reported under OMB No. 0581-0093. The estimated annual burden of 12.5 hours for completing the Candidate Profile form represents a new burden to be reported under OMB No. 0581-0093 for the first time.

The provisions of the amendments to the Order in this proposal have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping or reporting costs or requirements.

The proposed forms to be modified would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act, as well as the proposed amendments to the Order. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. These forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

The information required has been designed to coincide with normal industry business practices to minimize the burden on the industry. The information sought is not available from other sources because such information relates specifically to persons covered by the Act and Order. Therefore, there is no practical method for collecting the required information without the proposed recordkeeping requirements and use of forms described herein.

The new recordkeeping requirement included in this proposed rule is:

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

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Respondents (Recordkeepers):

Producers and producer-packers.

Estimated Number of Respondents (Recordkeepers): 5,400.

Estimated Number of Responses per Respondent (Recordkeeper): 1.

Estimated Total Annual Burden on Respondents (Recordkeepers): 2,700 hours.

Information collection requirements included in this proposed rule resulting in an increase or decrease in burden are:

(2) *A Transaction Report to be completed by first handlers, producer-packers, and importers.*

Estimate of Increased Burden: Public reporting burden for the collection of additional information from handlers and producer-packers is estimated to average an additional 3 minutes per each response [18 minutes (requested) – 15 minutes (currently approved) = 3 minutes (increase)].

Respondents: Handlers and producer-packers.

Estimated Number of Respondents: 521.

Estimated Number of Responses per Respondent: 52.

Estimated Total Annual Burden on Respondents: 8,128 hours [8,128 hours (requested) – 9,100 hours (currently approved) = 972 (decrease)]. Note: The previously approved burden of 9,100 hours is not correct due to an overstatement in the number of respondents. If the previous burden were recalculated based on 521 respondents, it would equal 6,773 hours. This means that the 8,128 hours now requested would represent an increase in burden of 1,355 hours instead of a decrease of 972 hours.

(3) *A background information form (AMS-755) to be completed by candidates nominated for appointment to the Board.*

Estimate of Burden: Public reporting burden for the collection of information from two nominees for each of the estimated five member and five alternate position openings annually is estimated to average 0.5 hours per response.

Respondents: Producers, producer-packers, handlers, importers, and cooperative representatives.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 10.0 hours [10.0 hours (requested) – 0.0 hours (new form) = 10.0 hours (increase)].

(4) *A Candidate Profile form used by Board staff and the Committee to determine qualifications to serve on the Board.*

Estimate of Burden: Public reporting burden for this collection of information from candidates to the Board is estimated to average 0.50 hours per response.

Respondents: Producers, producer-packers, importers, handlers, handler-importers, and cooperative representatives.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12.5 hours [12.5 hours (requested) – 0.0 hours (new form) = 12.5 hours (increase)].

The following information collection would be eliminated by this rule:

(5) *A producer or importer application to be completed by producers and importers seeking exemption from assessment.*

Estimate of Burden: Public reporting burden for this collection of information from producers, producer-packers, and importers is estimated to average 0.083 hours per response.

Respondents: Producers, producer-packers, and importers.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Decrease in Total Annual Burden on Respondents: 41.5 hours [0.0 hours (form discontinued) – 41.5 hours (currently approved) = 41.5 hours (decrease)].

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the amendments to the Order and USDA's oversight of the program, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of any recordkeeping and/or reporting burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) 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 concerning the recordkeeping and information collection requirements contained in this action should reference OMB No. 0581-0093, Docket Number FV-00-701 PR1, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames listed above. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

The Act was amended on June 23, 1998, by the Agricultural Research, Extension, and Education Reform Act (1998 amendments).

On July 31, 1998, USDA issued a news release inviting persons to submit proposals for implementing the 1998 amendments by September 30, 1998. Subsequently, on September 21, 1998, USDA extended the deadline to December 31, 1998, to provide the various segments of the honey industry ample opportunity to develop proposals. One proposal and eight comments were received.

The proposal was submitted by the National Honey Board with support from the American Beekeeping Federation (ABF), the American Honey Producers Association (AHPA), and the National Honey Packers and Dealers Association (NHPDA). Submissions by American Farm Bureau Federation, B. Weaver Apiaries, Inc., China Products North American, Inc., Mississippi Beekeepers Association, Joe Rowland, Thomas R. Smith, Southern Arizona Beekeepers Association, and U.S. Beekeepers did not include regulatory text. Therefore, they are being made part of the overall rulemaking record and will be considered along with the comments received on this proposed rule.

A copy of the current Order and the proposed rule amending the Order can be obtained by contacting Karen T. Comfort or John D. Reilly, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535 South Building, Washington, DC 20250-0244; telephone (202) 720-9915; facsimile (202) 205-2800. The current Order and the proposed rule amending the Order can also be found at: www.ams.usda.gov/fv/rpb.html.

Proposal

The Board submitted this proposal with support from the ABF, AHPA, and NHPDA. The proposed amendments to the Order submitted by the Board are explained below.

In §§ 1240.1 through 1240.28 of the Order, definitions would be added for the terms "Department," "honey production," "industry information," "national honey marketing cooperative," "plans and projects," "qualified national organization representing handler interests," and "qualified national organization representing importer interests." Each of these new definitions was added to sections 4602(19) through (24) of the Act as part of the 1998 amendments. Currently, the Order does not contain definitions for these terms. The definitions have also been arranged in alphabetical order for ease of reference.

Definitions would be revised for the terms "handle," "honey," "Honey Board," and "research." The definition of the term "handle" would be amended to exclude the purchase of honey or a honey product by a consumer or other end-user, which conforms to the revised definition set out in section 4602(7) of the Act.

The definition of the term "honey" would be modified to include comb honey. USDA has recognized in the past that the intent of the Act is to assess

comb honey. This proposed revision would resolve any confusion in this area.

The term "Honey Board" would reappear under the definition heading of "National Honey Board" which then clarifies that the terms "National Honey Board," "Honey Board," and "Board" all refer to the National Honey Board created by the Act.

The definition of "research" would be revised to include studies that test the effectiveness of market development and promotion efforts as well as studies on bees as provided for in the 1998 amendments to section 4601(b) of the Act.

Section 1240.30 would be revised to change the composition of the Board to 14 members consisting of: seven producers; two handlers; two handlers who are also importers, if approved in referendum; two importers; and one representative (i.e., officer, director, or employee) of a national honey marketing cooperative. The public member position would be eliminated as well as specific representation for honey exporters. These changes are authorized by the 1998 amendments to section 4606(c)(2) of the Act. Except for the addition to the Board of two handlers who are also importers, these changes would become effective regardless of the outcome of the referendum. See also discussion on producer representation under *USDA Changes to Proposal*.

Presently, the Board has 13 members consisting of: seven producers; two handlers; two importers or one importer and one exporter; one cooperative representative; and one public member. The cooperative representative must be an officer or employee of a honey marketing cooperative but does not necessarily have to be from a "national" honey marketing cooperative.

Section 1240.31 would be revised to remove obsolete language regarding the length of the terms of office of the initial Board members. This section would also be revised to provide that terms of office be staggered periodically as recommended by the Board and as determined by the Secretary to maintain continuity of Board membership and to avoid situations where a majority of the members' terms end at the same time.

The Order currently provides for staggered terms only with respect to the seating of members on the initial Board. Section 4606(c)(8) of the Act as amended in 1998 provides for periodic staggering of Board terms. This amendment does not require approval in the referendum in order to take effect.

In § 1240.32 concerning nominations, a number of revisions would be made to

conform the Order with the 1998 amendments to the Act with regard to the nomination process for Board members. For instance, references to state associations representing exporters would be deleted from § 1240.32(a) since section 4606(c)(2) of the amended Act no longer provides for exporter representation on the Board. Similarly, references to the Board member and alternate positions representing the general public would be removed from this section to correspond with the elimination of these positions by the 1998 amendments to the Act. References to the initial Committee formed after the Order was implemented as well as language on the first annual meeting of the Committee would also be deleted from § 1240.32 since such provisions are no longer relevant. Furthermore, as provided in section 4606(b)(2) of the amended Act, § 1240.32 would be amended to reflect the Secretary's authority to stagger the terms of Committee members. These revisions do not require approval in the referendum in order to take effect.

In addition, § 1240.32(a)(3) would be revised so that the term of office for Committee members would begin on July 1 instead of January 1. This change would accommodate the nomination of Committee members by state beekeeper associations, which often meet in the winter months. Currently, it is difficult for the associations to meet and elect their nominees, for the nominees to complete and submit background information forms, and for the Secretary to review the nominations and make a determination prior to the beginning of the term of office on January 1. Having the term of office commence on July 1 would allow adequate time for the nomination process to be completed prior to the beginning of the term. In addition, since the Committee's main meeting is usually in the fall, new members would be appointed by the Secretary in time to participate in that meeting if the term of office begins on July 1. This change would go into effect regardless of the outcome of the referendum.

Section 1240.32(b) would be revised with regard to the process the Committee would follow in considering recommendations of nominees and submitting nominations to the Secretary for handler, importer, handler-importer, and cooperative representative positions on the Board. Based on sections 4606(c)(2)(B) through (E) of the Act, as amended, the Committee would be required to consider the recommendations of "qualified organizations representing handler interests," "qualified organizations

representing importer interests," and "qualified national honey marketing cooperatives." The requirements for qualification or certification of these organizations are set forth in section 4606(c)(6) of the Act. These requirements were added to the Act to ensure that the recommendations being made to the Committee would be from organizations that truly represent the various industry segments. If, in a given instance, there is not a qualified national organization that represents handler or importer interests, the Committee would consider the recommendations of individual handlers who have paid assessments on the honey they have handled or the recommendations of individual importers who have paid assessments on the honey they have imported. This revision would become effective regardless of the outcome of the referendum.

Currently, candidates for nomination to the Board for handler or importer positions may be recommended to the Committee by any industry organization that represents the interests of handlers or importers. There are no certification or qualification requirements that need to be met by the industry organization making the recommendations.

With regard to nominations for the cooperative position on the Board, the current Order does not provide a process whereby recommendations are initiated by qualified national honey marketing cooperatives. The current Order also does not limit cooperative nominations to persons affiliated with honey marketing cooperatives that are "national" in character. The current Order does require that the representative be an officer or employee of the cooperative. In contrast, the proposed revision of § 1240.32(b) would expand eligibility to include all directors of a cooperative's board. This takes into account the possibility that one may serve on the board of directors of a cooperative but not necessarily be an officer of the cooperative.

The Act, as amended, requires the Committee to make the following nominations: (1) one producer member (and alternate) from each of the seven regions established by the Secretary; (2) two handler members (and two alternates) from recommendations made by qualified national organizations representing handler interests; (3) two importer members (and two alternates) from recommendations made by qualified national organizations representing importer interests; (4) two handler members who are also importers (i.e., handler-importers) and two alternates from recommendations

made by qualified national organizations representing handler or importer interests; and (5) one member (and one alternate) who are officers, directors, or employees of a national honey marketing cooperative from recommendations made by qualified national honey marketing cooperatives. Therefore, this proposed rule would revise § 1240.32 of the Order to adopt this new Board composition and to remove the obsolete references to the current Board structure. The two handler-importer positions on the Board are subject to voter approval in the referendum before taking effect.

Section 1240.32(b) would also be revised to require that at least 75 percent of an importer's gross income generated by the sale of honey and honey products during any three of the preceding five years be from the sale of imported honey and honey products in order to be eligible for nomination to one of the importer member or alternate positions on the Board. This conforms to section 4606(c)(5)(B) of the Act as amended in 1998. Presently, the Order does not establish a minimum gross income level for importer member eligibility. This change would take effect regardless of the outcome of the referendum.

As mandated by section 4606(c)(4) of the Act, and not subject to voter approval in the referendum, § 1240.32(b)(6) in the proposal would be amended with respect to the administrative reconstitution of the Board if certain criteria are met. The 1998 amendments to the Act made changes in Board reconstitution requirements in order to provide more equitable treatment and fairness of representation on the Board. See discussion on Board reconstitution under *USDA Changes to Proposal* in which references to reconstitution of the Board would be moved from § 1240.32 to § 1240.33.

The proposal would require the Board to review every five years: (1) the geographic distribution of domestically produced honey assessed under the Order, (2) the changes in the annual average percentage of assessments owed by importers under the Order relative to assessments owed by producers and handlers of domestic honey and honey products, and (3) whether there are any changes in the proportion of assessments owed on imports by importers and handler-importers.

As a result of this review, and if necessary to reflect changes in the proportion of domestic and imported honey assessed, the Board would recommend for the Secretary's approval changes in the regional representation of

honey producers. And, if the proportion of assessments owed by handler-importers compared with the proportion of assessments owed by importers changed by more than 6 percent from the base period or if the proportion of assessments owed by importers compared with the proportion of assessments owed by producers and handlers of domestic honey and honey products changed by more than 6 percent from the base period proportion, the Board would recommend to the Secretary: (1) the reallocation of handler-importer member positions as handler positions; (2) the reallocation of importer member positions as handler-importer positions; (3) the reallocation of handler-importer positions as importer member positions; or (4) the addition of Board members.

For the initial review conducted by the Board, the base period proportions would be the proportions determined by the Board for fiscal year 1996. Otherwise, the base period proportions would be the proportions determined during the prior review.

Recommendations made by the Board shall be based on the five-year average of annual assessments, excluding the two years containing the highest and lowest disparity between the proportion of assessments owed from imported and domestic honey or honey products and whether any change in the average in the annual assessments is from the assessments owed by importers or the assessments owed by handler-importers.

The provision on Board reconstitution in § 1240.32(b)(6) of the current Order provides authority for the Board to review the fairness of representation on the Board among producer regions, but not the adequacy of representation among handlers and importers serving on the board. In addition, the criteria for evaluating representation on the Board are more permissive in the current Order when compared to the assessment-based criteria provided for in the proposed new version. Also, the current Order, while requiring the Board to conduct a review every five years, does not mandate that the Board propose changes to representation among producer regions as a result of such review.

In § 1240.35 on Board meeting procedures, the quorum requirement would be changed from seven to eight members assuming the voters approve the amendments in the referendum allowing the size of the Board to increase from 13 to 14 members. This would maintain the practice that more than half of the Board members must be present at Board meetings for official Board action to be taken. Note, if the

voters in the referendum do not approve the amendments, the number of Board members would decrease from 13 to 12 and the quorum requirement would not be raised. This would occur because the public member position would be eliminated regardless of the outcome of the referendum.

In § 1240.36, a grammatical change would be made, replacing the word “of” with the word “at” in the second sentence without changing the meaning. This change would go into effect regardless of the outcome of the referendum.

In § 1240.38, the Board’s duty to investigate potential violations of the Order in paragraph (d) would be expanded to also include the authority to investigate violations of any rule or regulation implemented to carry out the Order. The Board would continue to be required to report any findings to the Secretary.

An editorial change would be made in § 1240.38(l) covering the Board’s authority to appoint working committees. The provision currently states that members of committees be “drawn from” producers, handlers, importers, exporters, members of wholesale or retail outlets, or other members of the public. The proposed new language reads simply that the committees “may include” these representatives. This revision does not alter the eligibility of who is able to serve on working committees. This revision to § 1240.38(l) would go into effect regardless of the outcome of the referendum.

In addition, throughout § 1240.38 the words “plan” and “plans” are inserted in place of “project” and “projects” in certain instances. For example, the repeated use of the phrase “programs and projects” would read “programs and plans.” In addition to programs and projects being closely synonymous in meaning and somewhat redundant when used together, the use of “plan” or “plans” better describes the Board’s planning activities. Also, the term “industry information” would be inserted alongside the other permissible program activities of research, promotion, and consumer education as provided for in section 4601(b)(1) of the amended Act and elsewhere. These changes to § 1240.38 would go into effect regardless of the outcome of the referendum.

In the text of § 1240.39 as well as the section title and the heading immediately preceding the section, “industry information” would be added to reflect the Board’s authority to conduct this type of activity along with research, promotion, and consumer

education. The addition of “industry information” as an authorized activity appears in section 4601(b)(1) of the Act and elsewhere. The word “programs” would also be added wherever the words “plans and/or projects” appear. This is consistent with the Act, which frequently uses the word “programs” in connection with research, promotion, industry information, and consumer education activities. These changes would go into effect regardless of the outcome of the referendum.

A new paragraph would be added to § 1240.39 authorizing the Board to conduct research designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects relating to beekeeping, honey production, and honey bees. The Board believes that the proposed changes to the Order authorized by the 1998 amendments to the Act would strengthen the honey industry by expanding research in areas that would help solve production problems, reduce costs of production, and enhance the image of honey as a pure and natural product. Such research authority is specifically provided for in sections 4601(a) through (b) of the Act.

Another new paragraph would be added to § 1240.39 authorizing the Board to conduct activities which may lead to the development of new markets or marketing strategies for honey or honey products, as well as activities to increase the efficiency of the honey industry and to enhance the image of honey and honey products. The authority to conduct these activities is specifically provided for in section 4601(b)(1)(C) of the amended Act. This paragraph would become effective regardless of the outcome of the referendum.

Another new paragraph would be added to § 1240.39 to address the Board’s authority to carry out activities and develop procedures for the inspection or monitoring of honey and honey products being sold for domestic consumption or for export from the United States. This includes the authority to develop minimum purity standards. Sections 4607(a)(8) and 4607(b) of the amended Act provide specific authority for the Board to develop and conduct these activities. Any program involving the establishment of minimum purity standards as well as systems for inspection or monitoring of honey or honey products would be subject to prior approval by the Secretary. In addition, the Board’s power to develop purity standards or inspection or monitoring programs that are mandatory

must first be approved by voters in the referendum.

Sections 1240.39 and 1240.40 would be amended to allow activities to be funded with donations or other funds available to the Board in addition to assessment funds. Section 4606(e)(1) of the amended Act created the specific authority for the Board to accept voluntary contributions to finance expenses covered in its budget including activities in research, promotion, consumer education, and industry information as well as expenses for the administration of the Board. These changes to §§ 1240.39 and 1240.40 would go into effect regardless of the outcome of the referendum.

In § 1240.40 on budget and expenses, industry information would be included in the types of activities for which the Board is authorized to incur expenses based on its authorization as a permissible activity under section 4601(b)(1) and elsewhere in the Act. This revision does not require approval in the referendum.

Also in § 1240.40, a new paragraph would be added to require the Board to reserve at least 8 percent of all assessments collected each year for expenditure on research programs designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects relating to beekeeping, honey production, and honey bees. The Board believes that the additional assessment funding for such research projects, including an 8 percent allocation for production research, would allow the industry to leverage its resources to make research both practical for and applicable to the industry’s needs. Any allocated funds remaining at the end of the year would be carried forward for allocation and expenditure in subsequent years. The 8 percent figure was selected because it provides the funding level the industry felt would be adequate for the intended research. Allocating 8 percent of the Board’s funds to this type of research is specifically provided for in section 4606(f)(2) of the amended Act. In order to become effective, this provision must be approved in the referendum.

Section 1240.41 would be amended so that handlers as well as producer-packers in their capacity as handlers would pay assessments. Currently, only producers and importers as well as producer-packers in their capacity as producers are subject to assessment under the Order.

First handlers would be responsible for paying assessments on the honey they handle as well as collecting and remitting assessments from producers.

The total assessment on honey produced in the United States would be increased from \$0.01 per pound to \$0.015 per pound. Payment of this total amount would be allocated among producers, handlers, and producer-packers. The assessment rate to be levied on producers for honey produced and handled would be \$0.0075 per pound of honey. This is a decrease from the current assessment rate of \$0.01 per pound paid by producers. A new assessment levied on handlers would be \$0.0075 per pound of honey handled. Producer-packers would pay a \$0.0075 assessment on the honey they produce as well as a \$0.0075 assessment on the honey for which they act as a first handler, even if the honey handled was from the producer-packer's own production.

The new assessment rates for producers, handlers, and producer-packers is authorized by section 4606(e)(3) of the Act. Sections 4608(a) and 4608(e) provide new requirements affecting first handlers with regard to the payment of the handler assessment as well as the collection and payment of the producer's assessment. These proposed changes to the Order at § 1240.41 covering the new assessment rates as well as the authority to subject handlers to assessment must first be approved in the referendum. If the amendments are not approved in the referendum, the current rate of \$0.01 per pound payable by domestic producers would remain in effect, and handlers would not be subject to assessment.

Section 1240.41 would also be revised so that the total assessment on honey and honey products imported into the United States would be increased from \$0.01 per pound to \$0.015 per pound in order to equal the combined rate paid by producers and handlers on domestic honey. Of this \$0.015 total, \$0.0075 would represent the assessment due from the importer, and \$0.0075 would represent the assessment due from a handler and paid by the importer on behalf of the handler. The full assessment on imported honey would be due at the time of entry of the honey into the United States. The authority for increasing the assessment on imported honey is found in section 4606(e)(3)(B) of the Act and is subject to referendum approval before being implemented. If the amendments are not approved in the referendum, the current rate of \$0.01 per pound payable by importers on honey and honey products would remain in effect.

Section 1240.41 would also be amended so that importers are ultimately responsible for the payment of assessments in the event the U.S.

Customs Service (Customs) did not collect the amounts owed at the time of entry. While the current Order makes reference to importers being subject to late payment charges, it does not expressly provide that importers are liable for paying the assessment directly to the Board if Customs fails to collect the amount. This change is authorized by section 4608(i)(2) of the Act. In addition, reference in the Order to the collection of assessments by the Secretary would be removed since the Secretary does not undertake the collection responsibility. These changes clarifying the Secretary's role as to assessment collection as well as the ultimate liability of importers for assessment payment do not require approval in the referendum.

Section 1240.41 would also be amended to make producers subject to late-payment charges and interest penalties on past-due assessments similar to handlers, importers, and producer-packers. Presently, the Order only mentions that a producer is responsible for payment of the assessment to the Board should the first handler fail to collect the assessment. Subjecting producers to late-payment charges and interest penalties for assessments owed to the Board would be consistent with the sanctions other program participants face for failing to pay amounts due to the Board. This change would go into effect regardless of the outcome of the referendum.

Since the honey price support loan program, as provided in the Agricultural Act of 1949 [7 U.S.C. § 1446(b)], has been discontinued, § 1240.41(g) of the current Order would be revised by referring to a more generic loan program. This generic reference would adequately accommodate any new recourse loan program or other loan program that might be developed by USDA's Farm Service Agency. The other features of this provision would not be changed. The Board's proposal would have this provision on loan programs appear at § 1240.41(m). However, see discussion under *USDA Changes to Proposal* in which this provision would appear at § 1240.41(k). This change does not require approval in the referendum.

In § 1240.42 on exemption from assessment, an exemption would be added for handlers handling less than 6,000 pounds of honey per year. The 6,000-pound limit is identical to the exemption amount for producers, producer-packers, and importers. Providing the exemption for handlers conforms to section 4606(e)(4)(B) of the amended Act. This amendment would not take effect unless the referendum is approved.

In addition, § 1240.42(c) in the current Order would be removed. This section requires that a person file an application with the Board in order to receive an exemption from paying assessments. With the removal of this provision, no direct action would be necessary for a producer, producer-packer, handler, or importer to qualify for exemption, other than to maintain relevant records.

Based on the number of persons eligible to claim an exemption, eliminating the application requirement would significantly reduce the reporting requirement for applicants as well as the consequent recordkeeping demands on the Board's staff. The elimination of the exemption application requirement in § 1240.42(c) conforms to the 1998 amendments to the Act, which struck a similar provision from section 4606(e)(4)(B), as redesignated. This change would go into effect regardless of the outcome of the referendum.

A minor editorial change would also be made to § 1240.42 by inserting the word "United" to precede "States" for purposes of clarification and correctness.

The Board proposes that § 1240.43 of the Order be removed in its entirety. This section authorizes the payment of refunds to States operating a similar assessment program. Coverage of this same subject in § 1240.42(f) would also be stricken. Both § 1240.43 and § 1240.42(f) of the Order discuss how States operating programs similar to those authorized by the Act may obtain refunds of assessments from the Board. These provisions were originally included in the Order because a program existed in California at the time. Since the California program no longer exists, and no other similar State plans exist, the provisions in the Order referencing State plans are no longer relevant and therefore would be removed. The elimination of these provisions from the Order would take effect regardless of the outcome of the referendum.

The section on operating reserves at § 1240.44 in the current Order would be redesignated as § 1240.43.

A new § 1240.44 would be added to authorize the Board to develop and recommend to the Secretary a system or program for monitoring the purity of honey and honey products being sold for domestic consumption and for export. The authority to develop and carry out such programs, including the establishment of minimum purity standards, is based on sections 4607(a) through (b) of the amended Act. This section must be approved in the referendum to become effective.

A new § 1240.45 would also be added to authorize the Board, subject to the approval of the Secretary, to develop and implement a voluntary quality assurance program concerning purity standards for honey and honey products. Components of this program could include, among other things, the establishment of an official seal of approval to be displayed on honey and honey products which meet the standards of purity established under the program, actions to encourage persons in the honey industry to participate in the program, actions to encourage consumers to purchase honey and honey products containing the official seal of approval, and periodic inspections by the Secretary of honey and honey products of individuals who participate in the program. The components provided in this new provision parallel those set forth in sections 4607(a) and (c) of the amended Act. This section does not require approval in the referendum.

A new § 1240.46 would also be added to the Order authorizing the Board to recommend, subject to the Secretary's approval, the establishment of minimum purity standards for honey. Authority for this provision is based on section 4607(a) of the amended Act. This section must be approved in the referendum to become effective.

New §§ 1240.44, 1240.45, and 1240.46 would address concerns about the disparate quality of honey available to consumers as well as the need to maintain a positive and wholesome marketing image for honey and honey products.

Section 1240.50 would be revised to make producers subject to reporting requirements similar to handlers, importers, and producer-packers. This would cover producers subject to assessment as well as those currently exempt. In 1996, section 4608(f)(1) of the Act was amended to add recordkeeping and reporting requirements for producers. Requiring producers to be subject to reporting requirements similar to others in the honey program would facilitate enforcement of the Order. Without this reporting requirement, it has been difficult for the Board to investigate producers for potential noncompliance with the Order. This reporting requirement would also assist the Board in periodically collecting production information to help identify industry trends for use in program planning and evaluation.

Section 1240.50 would also be revised to provide the Board the authority to request reports from producers and producer-packers on the quantity of

honey produced and the total number of bee colonies maintained. This change is authorized by the 1998 amendments to the Act. Section 1240.50 already contains reporting requirements for handlers and producer-packers with regard to the total quantity of honey acquired or handled as well as the total quantity of honey imported in the case of importers. Section 1240.50 would also be revised so that these reporting requirements would include coverage for "honey products" in addition to "honey" as provided in the current Order for handlers, producer-packers, and importers. Section 4608(f)(1) provides authority for these changes.

The changes in reporting requirements in § 1240.50 involving producers, producer-packers, handlers, and importers would go into effect regardless of the outcome of the referendum.

In addition, § 1240.51 would be amended to require that producers as well as handlers, importers, and producer-packers maintain and make available for inspection their books and records. This applies to those subject to assessment as well as those currently exempt. Making producers subject to recordkeeping requirements similar to others in the program would facilitate enforcement of the Order. Without this requirement, it has been difficult for the Board to carry out compliance investigations against producers for possible violation of the Order. This change would go into effect regardless of the outcome of the referendum.

Section 1240.51 would also be revised to provide the authority for employees or agents of the Board or USDA to inspect the books and records of individuals subject to the Act and Order. The existing Order provides no authority for "agents" to inspect books and records. One reason for extending this authority to agents is to provide the Board the flexibility of utilizing the services of an outside auditing firm to assist with its compliance efforts. This change is authorized by section 4608(f)(2). This change would go into effect regardless of the outcome of the referendum.

In § 1240.52, a specific penalty would be added for persons convicted of disclosing confidential information. The penalty consists of a fine of up to \$1,000, imprisonment for up to 1 year, or both, as well as removal from office or employment. These proposed changes to § 1240.52 of the Order are authorized by section 4608(g) of the Act and do not require approval in the referendum.

In § 1240.61, a change was made to remove the word "projects" and replace it with the word "plans."

In § 1240.62 on suspension or termination of the Order, there would be a change to allow handlers, if subject to assessment, to vote in continuance referenda every five years or referenda on request as provided for in sections 4612(c) through (d) of the Act. This change would only go into effect if the referendum is approved. Obsolete provisions referring to the first continuance referendum would be removed regardless of the outcome of the referendum.

Section 1240.62 would also be revised with regard to petitions for referenda so handlers would be included in calculating the 10 percent which is needed for submitting a petition to have a referendum. The authority for this change is provided by section 4612(d)(1) of the Act and would only go into effect if the amendment making handlers subject to assessment is approved in the referendum.

Also added to § 1240.62 is a requirement that referenda at the request of the Board or by petition of program participants can be held no more than once every two years. If continuation of the Order is approved in a referendum held at the request of the Board or by petition, then the next periodic referendum to determine the continuation of the Order shall be held no sooner than five years from the date of the referendum on request. These changes are made pursuant to sections 4612(c) through (d) of the Act. These changes are not subject to approval in the referendum.

USDA Changes to Proposal

The Department has modified the Board's proposal to make it consistent with the Act when necessary as well as provide clarity, consistency, and correctness when appropriate with respect to word usage and terminology. For example, in some cases, references to "Honey Board" or "National Honey Board" were changed to "Board" for simplicity. In certain instances, gender-specific references were replaced with gender-neutral language.

The Department did not change the title of the Order, as proposed by the Board, to include a reference to "industry information" for consistency with the Act's title which was not changed by the 1998 amendments to the Act. However, a subpart designation has been added to apply to §§ 1240.01 through 1240.67.

In the definition of "Act," the Department did not change the Act's name to reference "industry

information” as proposed because, while the Act was amended, the title was not.

The Board proposed defining “National Honey Board” instead of “Honey Board” to include the Board’s common reference. The Department retained “Honey Board” as the term defined but included “National Honey Board” as a synonym.

The definition of “part and subpart” was not changed to refer to the Order as it was proposed to be renamed by the Board.

The term “plans and projects” is not a new definition being added to the Order as indicated in the proposal. A definition for this term does appear in the present Order at § 1240.21. The proposal would amend the existing definition by adding the words “industry information” to the existing text.

A minor change in the definition of “Committee” was made for syntax and clarity.

In the definitions of “qualified national organization representing handler interests” at § 1240.23 and “qualified national organization representing importer interests” at § 1240.24, several section cross-references were added. A minor change was also made to the latter definition for purposes of syntax and clarity. In addition, portions of the text from each definition on eligibility requirements were moved to § 1240.32 on nominations and revised slightly for purposes of brevity and clarity. For example, “the association or organization” was shortened to “the organization” in almost every instance.

In the definition of “research” at § 1240.25, the words “products containing honey” were replaced with “honey products” for consistency with language in the Act and Order. The definition of “research” was also revised to add clarification to the proposal’s reference to “studies on bees” in accordance with sections 4601(a)(9) through (10), 4601(b)(1)(C) through (D), and 4606(f)(2)(A) of the Act.

In § 1240.30 and elsewhere, the word “national” was placed in front of references to “honey marketing cooperative” to be consistent with usage of this term in section 4606(c)(2)(E) and elsewhere in the Act.

In § 1240.31 on terms of office, several changes were made in order to make the language consistent with USDA procedures and terminology, such as the substitution of gender-neutral language. Another revision added authority for the Secretary to make a determination on staggered Board terms individually.

This change was made pursuant to language added to section 4606(c)(8) of the Act, which refers only to the Secretary’s authority in making determinations on staggered terms. In the last sentence following “alternate” in § 1240.31, the word “member” was stricken to parallel similar word usage elsewhere in the section.

In § 1240.32, subparagraph (b)(6) as it appeared in the proposal was stricken since it covers actions of the Board as opposed to actions of the Committee, which is the subject of § 1240.32. The text of former subparagraph (b)(6) would be reinserted, with several modifications, as a new § 1240.33 titled “Board reconstitution.”

A new provision was added to § 1240.32(b)(8) on the basic eligibility requirements for those nominated to fill Board seats as handler-importers. To be nominated for the handler-importer position, a handler must also have been an importer of record of at least 40,000 pounds of honey during any three of the preceding five years. These requirements are contained in section 4606(c)(2)(C) of the Act. The creation of two handler-importer positions on the Board must be approved in the referendum to become effective.

In § 1240.32(b)(9), changes were made to underscore the possibility that a full slate of nominees may not be submitted should Board members serve in staggered terms. The proposal and current Order use set numbers in terms of filling the different Board positions. The language is modified to better convey that the number of nominations will directly correspond to the number of positions due to become vacant.

In § 1240.32(b)(12), language was added providing that organizations seeking certification as a qualified national organization for purposes of making nomination recommendations must agree to notify nonmembers of Board nomination opportunities as well as consider the nomination of nonmembers interested in serving on the Board. This language was added to conform with section 4606(c)(6)(F) of the Act.

Finally, a new § 1240.32(b)(13) was added to state that the certification of an organization by the Secretary shall be final, pursuant to section 4606(c)(6)(C) of the Act.

A new § 1240.33 contains the text on Board reconstitution. This topic is currently covered under § 1240.32(b)(6) in the Order. The Board’s proposal to amend the Order also covers this topic in § 1240.32(b)(6). It is recommended that the subject of Board reconstitution be moved from § 1240.32 to § 1240.33 for purposes of organization and clarity.

Section 1240.32 primarily covers the activities of the Committee and the nomination process for Board members. Board reconstitution covers the process whereby the Board evaluates possible changes in representation to the Board based on such factors as changes in the geographic distribution of honey producers, changes in the proportion of domestic and imported honey assessed, or the source of assessments on imported honey or honey products. It would be clearer from an organizational standpoint for this topic to be covered in a new § 1240.33.

In the new § 1240.33 covering Board reconstitution, the word “shall” was substituted in place of “may” before the word “recommend” in paragraph (b) of the proposed text to clarify the Board’s responsibility to move forward with reconstituting the Board if warranted by the results of the review. Section 4606(c)(4)(B) of the Act requires the Board to recommend reconstitution of the Board to the Secretary if certain criteria as provided in the section are met. A provision was also added to emphasize that, notwithstanding any action on reconstitution, at least 50 percent of the members serving on the Board shall be honey producers, pursuant to section 4606(c)(7) of the Act. Several other minor editorial changes were made including use of the word “continuance” in place of “continuation” in modifying referendum.

The Board’s proposal includes no modifications to § 1240.34 on vacancies. However, § 1240.34(a) needs to be revised to include the cross-reference to the new § 1240.33 on Board reconstitution in place of § 1240.32(b)(6).

Section 1240.34(a) of the existing Order provides an exception where a producer member or alternate serving on the Board may complete the term of office in situations where, due to Board adjustment of regions, the member or alternate is no longer from the region from which the person was appointed. Section 4606(c)(4) of the Act addresses changes in geographic regions for producer representation and reallocation of handler, importer, and handler-importer positions on the Board. For purposes of consistency, the exception in § 1240.34(a) allowing producers affected by geographic redistricting to finish out their term would be extended to allow those members serving in handler, importer, or handler-importer Board positions to complete their terms in situations where their position is subject to reallocation by the Board.

In § 1240.38 on Board duties and in § 1240.40(a), a requirement was added that budgets be submitted to the Secretary for approval 60 days in advance of the beginning of the fiscal period. The Act and current Order do not specify any time frame for submitting the budget to the Secretary. The 60-day period formalizes current USDA policy and allows adequate time for review and approval prior to the start of the fiscal period. A minor change was made to § 1240.38(e) by inserting "consumer" to precede "education" and deleting the word "development." And "industry information" was added to the list of allowable program activities in § 1240.38(l) as provided for in 1998 amendments to the Act.

Several changes were made to the Board's proposal involving § 1240.39. A paragraph was added providing that the Board shall conduct "an independent evaluation" of the effectiveness of the Order and its programs at least once every five years. This requirement appears in Commodity Promotion and Evaluation [7 U.S.C. 7401]. Section 1240.39(e) of the current Order does contain a provision on periodic program evaluations; however, it does not require that the review be conducted by an independent source.

As a result of adding the paragraph on independent evaluations, the paragraphs in § 1240.39 were redesignated.

Also in § 1240.39, the proposed provision on activities and procedures for monitoring the purity of honey and honey products was modified by striking the words "and prevention" from the phrase "including programs or activities for identification and prevention of adulterated honey." Pursuant to section 4607(b)(2) in the Act, the Board has the authority to "develop and recommend * * * a system for identifying honey."

Finally, the phrase "research, education, industry information, and promotion" in § 1240.39 of the proposal was replaced with "research, promotion, consumer education, and industry information" to be consistent with similar references elsewhere in the section.

In § 1240.40(a), the words "industry information" were added to "research, promotion, and consumer education" to be consistent with similar references elsewhere in the provision.

In § 1240.40(c), the word "projects" was not changed to "plans" as suggested in the proposal. The word "projects" is retained so as to mirror the same language in section 4606(f)(2) of the Act on this point.

Section 1240.41(a) of the current Order and the proposal was removed because it is not necessary.

In the discussion of assessment rates in § 1240.41, changes were made to clarify that handlers, importers, and producer-packers are subject to assessments for both honey and honey used in honey products while producers are assessed only on honey produced. This is based on section 4606(e)(3) of the Act. "U.S." was added where necessary to specify honey produced domestically versus honey produced outside the United States.

Discussion of the assessment rate on imported honey and honey products was expanded for purposes of clarification. For example, one change clarifies that importers must pay assessments through Customs to the Board. Both the current Order and the proposal provide that the importer is required to pay the assessment to the Board at the time the honey or honey products enter the United States. There is no specific mention of Customs acting as the payment intermediary. Congress made a similar clarification in section 4608(c) of the Act.

In § 1240.41, language on the prescribed interest rate set by the Board and approved by the Secretary was removed and replaced with language specifying that the rate of interest shall be prescribed in regulations issued by the Secretary.

A new paragraph (i) was added to § 1240.41 specifying that persons failing to remit assessments in a timely manner may also be subject to actions under federal debt collection procedures.

Finally, in § 1240.41 on government loan programs, the "USDA Commodity Credit Corporation" was substituted for "CCC," and other minor changes were made to the sentence to accommodate this change. Also, "USDA" was inserted before "loan program" in the first sentence for purposes of clarity. This provision was redesignated from § 1240.41(m) in the Board's proposal to § 1240.41(k).

Paragraphs (j) and (k) in § 1240.41 of the Board's proposal were redesignated as paragraphs (l) and (m) of § 1240.41.

In § 1240.42(a) on exemption from assessment, the words "or honey products" were added to the exemption language since the calculation of the 6,000 pound minimum amount to qualify for exemption from assessment can include both honey and honey products in the case of producer-packers, handlers, and importers. This is consistent with section 4606(e)(4)(A) of the Act as amended in 1998. In § 1240.42(c), the reference to a person who "claims" an exemption was

replaced with language referring to a person who has been exempt. This change was made because section 4606(e)(4) of the Act eliminated the requirement of filing a claim with the Board as a prerequisite to being exempt from assessments. Several other minor changes in word order and phraseology were also made.

In § 1240.44 on activities involving the inspection and monitoring of honey, the words "and the Secretary shall have the authority to approve or disapprove" were added to mirror similar language in section 4607(d) of the Act and to underscore the Secretary's oversight authority. The proposal provides that the Board is "authorized to develop and recommend to the Secretary" a system or program for monitoring the purity of honey. However, the Board's proposal contains no mention of the Secretary's authority to approve such system or program as is provided for in the 1998 amendments to the Act.

Also in § 1240.44, the words "or program" were inserted to follow the word "system" in several instances for purposes of consistency throughout the section. Also, several other minor changes in punctuation were made to follow similar construction in section 4607(b) of the Act.

In § 1240.45, language regarding the Secretary's authority to approve or disapprove the establishment of a voluntary quality assurance program was inserted to be consistent with similar language in section 4607(d) of the Act and to underscore the Secretary's authority on this point. A paragraph was also added providing that a producer, handler, or importer must participate in the voluntary quality assurance program in order to be eligible to display the official seal of approval. This addition is based on sections 4607(c)(2)(A) and (c)(3) of the Act. Finally, a provision was inserted to provide that a voluntary quality assurance program and any related rule or regulation for its development and operation may be "in addition to or independent of" any program, rule, or regulation involving an inspection and monitoring system established under the authority of § 1240.44. This language was taken from sections 4607(a)(8) and (c)(1) of the amended Act.

In § 1240.46 on minimum purity standards, the words "develop and" were inserted before "recommend" and "and related rules and regulations" were added to immediately follow "minimum purity standards" for consistency with section 4607(a)(8) of the Act.

In § 1240.50, minor grammatical corrections were made. Also, the articles

“the” and “a” were inserted at various points in the text.

In § 1240.51 on books and records, a change was made in reference to those subject to exemption since it is no longer necessary to file a claim with the Board in order to be exempt from assessments. In addition, the word “agent” was added for use with employees since section 4608(f)(2) of the amended Act provides authority for employees or agents of the Board or USDA to inspect and review books and records.

In § 1240.52 on confidential treatment, a revision is made so that the confidentiality provisions with respect to books, records, or reports would apply to officers and employees of the USDA and employees and agents of the Board. Members and alternates of the Board are specifically excluded from inspecting or reviewing books and records under section 4608(f)(2) of the amended Act in the first place. This change is authorized by section 4608(g)(1) of the amended Act. Presently, the Order as well as the Board’s proposal extend the confidentiality provisions to “any person.”

In § 1240.52(a), a minor edit was made substituting the word “the” in place of “a” to precede “number.”

Section 1240.52(c) of the proposal, which covers the penalties for disclosure of confidential information, was removed. The specific penalties for violating the confidentiality provisions of the Act and Order, as provided for in section 4608(g) of the Act, are self-executing and, therefore, are not included in the Order.

In § 1240.62 on the suspension or termination of Order, several minor revisions were made such as adding “(5)” after the word “five” and adding “(2)” after the word “two”. Also the phrase “subject to assessment under the Order” was inserted in both paragraphs (b) and (c) to provide greater clarity and completeness.

Referendum

After an opportunity for public comment, a referendum will be held among honey producers, producer-packers, importers, and handlers who would be subject to assessment under the 1998 amendments to the Act. Producers, producer-packers, importers, and handlers who are not exempt and who have been engaged in the production, importation, or handling of honey or honey products during a two-year representative period to be determined by the Secretary will be eligible to vote on the proposed amendments to the Order.

All known honey producers, producer-packers, importers, and handlers will be mailed information regarding the referendum. Those who do not receive a ballot and believe they are eligible will be able to request one from USDA.

The following proposed amendments to the Order must be approved by honey producers, producer-packers, importers, and handlers voting in a referendum before taking effect: (1) the requirement for the Board to reserve 8 percent of its funds annually for beekeeping and production research; (2) the authority for the Board to conduct projects, including developing recommendations for purity standards and an inspection and monitoring system, to enhance the image of honey and honey products; (3) the addition of two handler members who are also importers to the Board; (4) a decrease in the producer assessment from 1 cent per pound to 0.75 cents per pound; (5) the addition of an assessment of 0.75 cents per pound on handlers; and (6) an increase in the assessment rate from 1 cent per pound to 1.5 cents per pound on imports.

The following proposed amendments to the Order would become effective after the referendum, regardless of the outcome: (1) revised and new definitions for certain terms; (2) changing the two importer/exporter Board positions to two importer positions; (3) elimination of the public member position on the Board; (4) revised nomination and eligibility requirements for Board members; (5) a requirement that at least 50 percent of the Board members shall be honey producers and authority to stagger terms of office as necessary; (6) authority for the Board to accept voluntary contributions; (7) elimination of the requirement that exempt persons must file for an exemption; (8) the authority for the Board to develop an enforceable voluntary quality assurance program; (9) clarification of recordkeeping and reporting requirements; and (10) the removal of obsolete language.

There were several additional amendments to the Act in 1998 that do not require amendment of the Order. One of these amendments adds a 2-year statute of limitations for persons filing petitions under Section 10 of the Act. In addition, the Act was amended to provide that each producer-packer and importer who votes in referenda will have one vote as a handler and one vote as a producer or importer, assuming the producer-packer or importer would owe assessments as a handler in addition to owing assessments as a producer or importer. Further, the Act was amended to provide that the Order amendments

that are subject to approval in the referendum will become effective if (1) the changes are approved or favored by a majority of the producers, importers, and handlers voting in the referendum, and (2) that majority who voted produced, imported, and handled 50 percent or more of the quantity of the honey and honey products produced, imported, and handled during the representative period among those voting in the referendum. The 1998 amendments to the Act also provided that no individual provision of the amended Order shall be subject to a separate vote in the referendum.

If the proposed amendments to the Order regarding assessments on handlers are approved, the same voting criteria for passage will apply in all subsequent referenda. If the proposed amendments to the Order regarding assessments on handlers are not approved, handler approval would not be necessary in future referenda.

The proposal set forth below has not received the approval of the Secretary.

List of Subjects in 7 CFR Part 1240

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Honey promotion, Reporting and recordkeeping requirements.

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

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION

1. Revise the authority citation for Part 1240 to read as follows:

Authority: 7 U.S.C. 4601–4613; 7 U.S.C. 7401.

2. Revise the heading for 7 CFR Part 1240 to read as follows:

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION

3. Add a heading for a new subpart, consisting of §§ 1240.01 through 1240.67, and revise the table of contents for those sections to read as follows:

Subpart A—Honey Research, Promotion, and Consumer Information Order

Definitions

| | |
|---------|---------------------|
| Sec. | |
| 1240.01 | Act. |
| 1240.02 | Board. |
| 1240.03 | Committee. |
| 1240.04 | Consumer education. |
| 1240.05 | Department. |
| 1240.06 | Exporter. |

| | | | |
|--|--|--|-------------|
| 1240.07 | Fiscal period and marketing year. | | |
| 1240.08 | Handle. | | |
| 1240.09 | Handler. | | |
| 1240.10 | Honey. | | |
| 1240.11 | Honey production. | | |
| 1240.12 | Honey products. | | |
| 1240.13 | Importer. | | |
| 1240.14 | Industry information. | | |
| 1240.15 | Marketing. | | |
| 1240.16 | National honey marketing cooperative. | | |
| 1240.17 | Part and subpart. | | |
| 1240.18 | Person. | | |
| 1240.19 | Plans and projects. | | |
| 1240.20 | Producer. | | |
| 1240.21 | Producer-packer. | | |
| 1240.22 | Promotion. | | |
| 1240.23 | Qualified national organization representing handler interests. | | |
| 1240.24 | Qualified national organization representing importer interests. | | |
| 1240.25 | Research. | | |
| 1240.26 | Secretary. | | |
| 1240.27 | State. | | |
| 1240.28 | State association. | | |
| Honey Board | | | |
| 1240.30 | Establishment and membership. | | |
| 1240.31 | Term of office. | | |
| 1240.32 | Nominations. | | |
| 1240.33 | Board reconstitution. | | |
| 1240.34 | Vacancies. | | |
| 1240.35 | Procedure. | | |
| 1240.36 | Attendance. | | |
| 1240.37 | Powers. | | |
| 1240.38 | Duties. | | |
| Research, Promotion, Consumer Education, and Industry Information | | | |
| 1240.39 | Research, promotion, consumer education, and industry information. | | |
| Expenses and Assessments | | | |
| 1240.40 | Budget and expenses. | | |
| 1240.41 | Assessments. | | |
| 1240.42 | Exemption from assessment. | | |
| 1240.43 | Operating reserve. | | |
| 1240.44 | Inspection and monitoring system. | | |
| 1240.45 | Voluntary quality assurance program. | | |
| 1240.46 | Minimum purity standards. | | |
| Reports, Books, and Records | | | |
| 1240.50 | Reports. | | |
| 1240.51 | Books and records. | | |
| 1240.52 | Confidential treatment. | | |
| Miscellaneous | | | |
| 1240.60 | Influencing governmental action. | | |
| 1240.61 | Right of the Secretary. | | |
| 1240.62 | Suspension or termination. | | |
| 1240.63 | Proceedings after termination. | | |
| 1240.64 | Effect of termination or amendment. | | |
| 1240.65 | Personal liability. | | |
| 1240.66 | Separability. | | |
| 1240.67 | Patents, copyrights, inventions, product formulations, and publications. | | |
| 4.-6. Redesignate §§ 1240.1 through 1240.67 as follows: | | | |
| | Old section | | New section |
| | 1240.1 | | 1240.26 |
| | 1240.2 | | 1240.1 |
| | 1240.3 | | 1240.18 |

| | | | |
|--|---------------|--|-------------|
| | Old section | | New section |
| | 1240.4 | | 1240.10 |
| | 1240.5 | | 1240.12 |
| | 1240.6 | | 1240.20 |
| | 1240.7 | | 1240.8 |
| | 1240.8 | | 1240.9 |
| | 1240.9 | | 1240.21 |
| | 1240.10 | | 1240.13 |
| | 1240.11 | | 1240.6 |
| | 1240.12 | | 1240.22 |
| | 1240.13 | | 1240.25 |
| | 1240.14 | | 1240.4 |
| | 1240.15 | | unchanged |
| | 1240.16 | | 1240.3 |
| | 1240.17 | | 1240.28 |
| | 1240.18 | | 1240.2 |
| | 1240.19 | | 1240.27 |
| | 1240.20 | | 1240.7 |
| | 1240.21 | | 1240.19 |
| | 1240.22 | | 1240.17 |
| | 1240.30 | | unchanged |
| | 1240.31 | | unchanged |
| | 1240.32 | | unchanged |
| | 1240.34 | | unchanged |
| | 1240.35 | | unchanged |
| | 1240.36 | | unchanged |
| | 1240.37 | | unchanged |
| | 1240.38 | | unchanged |
| | 1240.39 | | unchanged |
| | 1240.40 | | unchanged |
| | 1240.41 | | unchanged |
| | 1240.42 | | unchanged |
| | 1240.43 | | remove |
| | 1240.44 | | 1240.43 |
| | 1240.50 | | unchanged |
| | 1240.51 | | unchanged |
| | 1240.52 | | unchanged |
| | 1240.60 | | unchanged |
| | 1240.61 | | unchanged |
| | 1240.62 | | unchanged |
| | 1240.63 | | unchanged |
| | 1240.64 | | unchanged |
| | 1240.65 | | unchanged |
| | 1240.66 | | unchanged |
| | 1240.67 | | unchanged |
| 7. Revise newly designated § 1240.2 to read as follows: | | | |
| § 1240.2 Board. | | | |
| <i>Board or National Honey Board</i> means Honey Board, the administrative body established pursuant to § 1240.30. | | | |
| 8. Revise newly designated § 1240.3 to read as follows: | | | |
| § 1240.3 Committee. | | | |
| <i>Committee</i> means the National Honey Nominations Committee established pursuant to § 1240.32. | | | |
| 9. Add a new § 1240.5 to read as follows: | | | |
| § 1240.5 Department. | | | |
| <i>Department</i> means the United States Department of Agriculture. | | | |
| 10. Revise newly designated § 1240.8 to read as follows: | | | |
| § 124.8 Handle. | | | |
| <i>Handle</i> means to process, package, sell, transport, purchase or in any other way place honey or honey products, or cause them to be placed, in the current | | | |

of commerce. This term shall include selling unprocessed honey that will be consumed without further processing or packaging. This term shall not include the transportation of unprocessed honey by a producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed, for the account of the handler or producer. This term shall not include the purchase of honey or a honey product by a consumer or other end-user of the honey or honey product.

11. Revise newly designated § 1240.10 to read as follows:

§ 1240.10 Honey.

Honey means the nectar and saccharine exudations of plants which are gathered, modified, and stored in the comb by honey bees, including comb honey.

12. Add a new § 1240.11 to read as follows:

§ 1240.11 Honey production.

Honey production means all beekeeping operations related to managing honey bee colonies to produce honey, harvesting honey from the colonies, extracting honey from the honeycombs, and preparing honey for sale and further processing.

13. Revise newly designated § 1240.13 to read as follows:

§ 1240.13 Importer.

Importer means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey or honey products outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such honey or honey products.

14. Add a new § 1240.14 to read as follows:

§ 1240.14 Industry information.

Industry information means information or a program that will lead to the development of new domestic and foreign markets, new marketing strategies, or increased efficiency for the honey industry, or an activity to enhance the image of honey and honey products and of the honey industry.

15. Add a new § 1240.16 to read as follows:

§ 1240.16 National honey marketing cooperative.

National honey marketing cooperative means a cooperative that markets its products in at least two of the following four regions of the United States, as determined by the Secretary:

(a) The Atlantic Coast, including the District of Columbia and the Commonwealth of Puerto Rico;

(b) The Mideast;

(c) The Midwest; and

(d) The Pacific, including the states of Alaska and Hawaii.

16. Revise newly designated § 1240.19 to read as follows:

§ 1240.19 Plans and projects.

Plans and projects means those research, promotion, industry information, and consumer education plans, studies, or projects established pursuant to §§ 1240.38 and 1240.39.

17. Add a new § 1240.23 to read as follows:

§ 1240.23 Qualified national organization representing handler interests.

Qualified national organization representing handler interests means an organization that the Secretary certifies as being eligible to recommend nominations to the Committee for handler, handler-importer, alternate handler, and alternate handler-importer members of the Board under § 1240.32.

18. Add a new § 1240.24 to read as follows:

§ 1240.24 Qualified national organization representing importer interests.

Qualified national organization representing importer interests means an organization that the Secretary certifies as being eligible to recommend nominations to the Committee for importer, handler-importer, alternate importer, and alternate handler-importer members of the Board under § 1240.32.

19. Revise newly designated § 1240.25 to read as follows:

§ 1240.25 Research.

Research means any type of systematic study or investigation, including studies testing the effectiveness of market development and promotion efforts, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of honey or honey products. Such term shall also include studies on bees to advance the cost effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, honey production, and honey bees.

20. Revise § 1240.30 to read as follows:

§ 1240.30 Establishment and membership.

A Honey Board (elsewhere in this part called the Board) is established to administer the terms and provisions of

this part. The Board shall consist of fourteen (14) members, each of whom shall have an alternate. Seven members and seven alternates shall be honey producers; two members and two alternates shall be honey handlers; two members and two alternates shall be honey importers; two members and two alternates shall be handlers of honey who are also importers; and one member and one alternate shall be an officer, director, or employee of a national honey marketing cooperative. The Board shall be appointed by the Secretary from nominations submitted by the Committee, pursuant to § 1240.32. Notwithstanding any other provision of this part, at least 50 percent of the members of the Board shall be honey producers.

21. Revise § 1240.31 to read as follows:

§ 1240.31 Term of office.

The members of the Board and their alternates shall serve for terms of three years, except that terms may be staggered periodically as recommended by the Board and as determined by the Secretary or as determined by the Secretary alone. No member or alternate shall serve more than two consecutive three-year terms. The term of office shall begin on April 1. Each Board member and alternate member shall continue to serve until the member or alternate's successor meets all qualifications and is appointed by the Secretary.

22. Amend § 1240.32 by:

- a. revising paragraphs (a)(1) and (a)(3), and (b)(1) and (b)(2) respectively;
- b. removing paragraph (b)(6); and redesignating paragraphs (b)(7) and (b)(8) as (b)(6) and (b)(7) respectively;
- c. revising newly designated paragraphs (b)(6) and (b)(7); and
- d. adding paragraphs (b)(8), (b)(9), (b)(10), (b)(11), (b)(12), and (b)(13) to read as follows:

§ 1240.32 Nominations.

* * * * *

(a) * * *

(1) There is established a National Honey Nominations Committee, which shall consist of not more than one member from each State, appointed by the Secretary from nominations submitted by each State association. Wherever there is more than one eligible association within a State, the Secretary shall designate the association most representative of the honey producers, handlers, and importers not exempt under § 1240.42 (a) and (b) to make nominations for that State.

* * * * *

(3) Members of the Committee shall serve for three-year terms, except that

the term of appointments to the Committee may be staggered periodically, as determined by the Secretary. The term of office shall begin on July 1.

* * * * *

(b) * * *

(1) The Committee shall nominate the members and alternate members of the Board and submit such nominations promptly to the Secretary for approval.

(2) The Committee shall meet annually to make such nominations, or at the determination of the Chairperson, the Committee may conduct its business by mail ballot in lieu of an annual meeting.

* * * * *

(6) In nominating producer members to the Board, no producer-packer who, during any three of the preceding five years, purchased for resale more honey than the producer-packer produced shall be eligible for nomination or appointment to the Board as a producer or as an alternate to a producer.

(7) In nominating importer members to the Board, no importer who, during any three of the preceding five years, did not receive at least 75 percent of the gross income generated by the sale of honey and honey products from the sale of imported honey and honey products shall be eligible for nomination or appointment to the Board as an importer or as an alternate to such importer.

(8) In nominating handler-importers to the Board, no handler who, during any three of the preceding five years, was not an importer of record of at least 40,000 pounds of honey shall be eligible for nomination or appointment to the Board as a handler-importer or as an alternate to a handler-importer.

(9) Six months before the new Board term begins, the Committee shall submit to the Secretary nominations for positions on the Board. The number of nominations will directly correspond to the number of producer, handler, importer, handler-importer, and cooperative member positions due to become vacant. Selection of nominees by the Committee will be pursuant to the following:

(i) Nominations for producer members and alternate producer members will be from one of the seven regions established by the Secretary in which a vacancy will occur;

(ii) Nominations for handler members and alternate handler members will be based on recommendations made by qualified national organizations representing handler interests, or, if the Secretary determines that there is not a qualified national organization representing handler interests, by

individual handlers who have paid assessments to the Board on honey or honey products handled;

(iii) Nominations for importer members and alternate importer members will be based on recommendations made by qualified national organizations representing importer interests, or, if the Secretary determines that there is not a qualified national organization representing importer interests, by individual importers who have paid assessments to the Board on imported honey or honey products;

(iv) Nominations for handler members and alternate handler members who are also importers (i.e., handler-importers) will be based on recommendations made by qualified national organizations representing importer interests or qualified national organizations representing handler interests: *Provided*, That, if the Secretary determines that there is not a qualified national organization representing handler or importer interests, then the Committee shall nominate members and alternate members from individual handlers or importers who have paid assessments to the Board on imported honey or honey products; and

(v) Nominations for a member and alternate member who are officers, directors, or employees of national honey marketing cooperatives will be based on recommendations made by qualified national honey marketing cooperatives.

(10) *Qualified national organization representing handler interests.* To be certified by the Secretary as a qualified national organization representing handler interests, an association or organization must meet the following criteria, as evidenced in a factual report submitted by the association or organization to the Secretary:

(i) The organization's membership is comprised primarily of honey handlers;

(ii) The organization represents a substantial number of handlers who handle a substantial volume of honey in at least 20 states;

(iii) The organization has a history of stability and permanency;

(iv) A primary or overriding purpose of the organization is to promote the economic welfare of honey handlers;

(v) A portion of the operating funds of the organization are derived from handlers; and

(vi) The organization demonstrates the ability and willingness to further the purposes of the Act.

(11) *Qualified national organization representing importer interests.* To be certified as a qualified national

organization representing importer interests, an association or organization must meet the following criteria, as evidenced in a factual report submitted by the association or organization to the Secretary:

(i) The organization's total paid membership is comprised of a significant number of importers or the organization's total paid membership represents at least a majority of the volume of honey imported into the United States;

(ii) The organization has a history of stability and permanency;

(iii) A primary or overriding purpose of the organization is to promote the economic welfare of honey importers;

(iv) Geographic territory is covered by the active membership of the organization;

(v) A portion of the operating funds of the organization are derived from importers; and

(vi) The organization demonstrates the ability and willingness to further the purposes of the Act.

(12) As a condition of certification by the Secretary as a qualified national organization representing handler or importer interests, an organization shall agree to:

(i) Notify nonmembers of the organization of Board nomination opportunities for which the organization is certified to make recommendations to the Committee; and

(ii) Consider the nomination of nonmembers when making the nominations of the organization to the Committee, if nonmembers indicate an interest in serving on the Board.

(13) A certification determination by the Secretary of a qualified organization representing handler or importer interests shall be final.

23. Add a new § 1240.33 to read as follows:

§ 1240.33. Board reconstitution.

(a) Every five years, the Board shall review the geographic distribution of the quantities of domestically produced honey assessed under this subpart and the changes in the annual average percentage of assessments owed by importers under this subpart relative to assessments owed by producers and handlers of domestic honey, including whether any changes in assessments owed on imported quantities are owed by importers or handler-importers. The Board shall conduct the initial review required by this paragraph prior to the initial continuance referendum conducted pursuant to the Act.

(b)(1) If warranted as a result of this review, the Board shall recommend for the Secretary's approval:

(i) Changes in the regional representation of honey producers;

(ii) The reallocation of handler-importer member positions as handler member positions;

(iii) The reallocation of importer member positions as handler-importer positions;

(iv) The reallocation of handler-importer member positions as importer member positions; and/or

(v) The addition of Board members.

(2) If such allocations are necessary to reflect changes in the proportion of domestic and imported honey assessed under this subpart or the source of assessments on imported honey or honey products, the Board may not recommend a reallocation or addition of members pursuant to paragraphs (b)(1), (ii), (iii), (iv), and (v) of this section unless:

(i) The proportion of assessments owed by handler-importers compared with the proportion of assessments owed by importers changed by more than 6 percent from the base period proportion determined in accordance with paragraph (d) of this section; or

(ii) The proportion of assessments owed by importers compared with the proportion of assessments owed on domestic honey by producers and handlers changed by more than 6 percent from the base period proportion determined in accordance with paragraph (d).

(c) Except as provided in paragraph (d), recommendations made under paragraph (b) of this section shall be based on:

(1) The 5-year average annual assessments, excluding the 2 years containing the highest and lowest disparity between the proportion of assessments owed from imported and domestic honey or honey products, determined pursuant to the review that is conducted under paragraph (a) of this section; and

(2) Whether any change in the average annual assessments is from the assessments owed by importers or the assessments owed by handler-importers.

(d) The base period proportions for determining the magnitude of change under paragraph (c) of this section shall be the proportions determined during the prior review conducted under this section. In the case of the initial review, the base period proportions shall be the proportions determined by the Board for fiscal year 1996.

(e) Notwithstanding any other provision of this section, at least 50 percent of the members of the Board shall be honey producers.

(f) Any such reallocation or addition of members shall be made at least six

months prior to the date on which terms of office of the Board begin each year and shall become effective at least 30 days prior to such date.

24. Amend § 1240.34 by revising paragraph (a) to read as follows:

§ 1240.34 Vacancies.

(a) In the event any member 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 automatically become vacant: *Provided*, That if as a result of Board reconstitution pursuant to § 1240.33, a producer member or alternate is no longer from the region from which such person was appointed, or if a member, whose position is based on their status as a handler, importer, or handler-importer is subject to reallocation by the Board, the affected member and/or alternate may serve out the term for which such person was appointed.

* * * * *

25. Amend § 1240.35 by revising paragraph (a) to read as follows:

§ 1240.35 Procedure.

(a) Eight members, including alternates acting in place of members of the Board, shall constitute a quorum: *Provided*, That such alternates shall serve only whenever the member is absent from a meeting or is disqualified. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

* * * * *

26. Revise § 1240.36 to read as follows:

§ 1240.36 Attendance.

Members of the Board and the members of any special panels shall be reimbursed for reasonable out-of-pocket expenses incurred when performing Board business. The Board shall have the authority to request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

27. Amend § 1240.38 by revising paragraphs (c), (d), (e), (g), (l), and (m) to read as follows:

§ 1240.38 Duties.

* * * * *

(c) To prepare and submit to the Secretary for approval 60 days in advance of the beginning of a fiscal period, a budget of its 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 develop programs and plans and to enter into contracts or agreements with the approval of the Secretary for the development and carrying out of programs and plans of research, promotion, advertising, consumer education, or industry information and the payment of the costs thereof with funds collected pursuant to this part;

* * * * *

(g) To periodically prepare and make public and to make available to producers, handlers, producer-packers, and importers, reports of its activities carried out and, at least once each fiscal period, to make public an accounting of funds received and expended;

* * * * *

(l) To appoint and convene, from time to time, working committees which may include producers, handlers, producer-packers, importers, exporters, members of wholesale or retail outlets for honey, or other members of the public to assist in the development of research, promotion, advertising, consumer education, and industry information programs for honey; and

(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.

28. Revise the undesignated heading preceding § 1240.39 to read as follows:

Research, Promotion, Consumer Education, and Industry Information

29. Revise § 1240.39 to read as follows:

§ 1240.39 Research, promotion, consumer education, and industry information.

(a) *Scope of activities.* The Board shall develop and submit to the Secretary for approval any plans, programs, or projects authorized in this section. Such plans, programs, and projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans, programs, or projects for consumer education, industry information, advertising, and promotion of honey and honey products designed to strengthen the position of the honey industry in the marketplace and to maintain, develop, and expand markets for honey and honey products;

(2) The establishment and conduct of marketing research and development plans to the end that the acquisition of knowledge pertaining to honey and honey products or their consumption and use may be encouraged or expanded, or to the end that the marketing and utilization of honey and honey products may be encouraged, expanded, improved, or made more efficient: *Provided*, That quality control, grade standards, supply management programs, or other programs that would otherwise limit the right of the individual honey producer to produce honey shall not be conducted under, or as a part of, this subpart;

(3) The development and expansion of honey and honey product sales in foreign markets;

(4) A prohibition on advertising or other promotion programs that make any false or unwarranted claims on behalf of honey or its products or false or unwarranted statements with respect to the attributes or use of any competing product;

(5) The sponsorship of research designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, honey production, and honey bees;

(6) The conduct of activities which may lead to the development of new markets or marketing strategies for honey or honey products. In addition, the Board may conduct activities designed to increase the efficiency of the honey industry or activities to enhance the image of honey and honey products and the honey industry;

(7) Activities and procedures for monitoring the purity of honey and honey products being sold for domestic consumption, or for export from the United States, including programs or activities for identification of adulterated honey;

(8) Periodic evaluation by the Board of each plan, program, or project authorized under this part to insure that each plan, program, or project contributes to an effective and coordinated program of research, promotion, consumer education, and industry information and submit such evaluation to the Secretary. If the Board or the Secretary finds that a plan, program, or project does not further the purposes of the Act, then the Board shall terminate such plan, program, or project; and

(9) The Board to enter into contracts or make agreements for the development and carrying out of research, promotion, consumer education, and industry information programs, and pay for the

costs of such contracts or agreements with funds received by the Board.

(b) *Independent evaluation.* In addition to any evaluation that may be carried out pursuant to paragraph (a)(8) of this section, the Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of this subpart and other plans, programs, and projects conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under paragraph (b) of this section.

30. Amend § 1240.40 by revising paragraphs (a) and (b), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c) to read as follows:

§ 1240.40 Budget and expenses.

(a) Sixty days in advance of the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including expenses of the Committee and probable costs of research, promotion, consumer education, and industry information.

(b) The Board is authorized to incur expenses for: research, promotion, consumer education, and industry information; such other expenses for the administration, maintenance, and functioning of the Board and the Committee as may be authorized by the Secretary; any operating reserve established pursuant to § 1240.43; and those administrative costs incurred by the Department specified in paragraph (d) of this section. The funds to cover such expenses shall be paid from assessments collected pursuant to § 1240.41, donations from any person not subject to assessments under this subpart, and other funds available to the Board including those collected pursuant to § 1240.67 and subject to the limitations contained in that section.

(c) The Board shall reserve at least 8 percent of all assessments collected during a year for expenditure on approved research projects designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, honey production, and honey bees. If any of the funds reserved under this paragraph are not allocated to approved research projects in a year, the remaining reserved funds shall be carried forward for allocation and expenditure in

subsequent years to be used on projects described in this paragraph.

* * * * *

31. Revise § 1240.41 to read as follows:

§ 1240.41 Assessments.

(a) *Domestic honey and honey products.* (1) The assessment rate to producers and producer-packers on honey produced by them in the U.S. and handled shall be \$0.0075 per pound of honey produced.

(2) The assessment rate to handlers, including producer-packers in their capacity as handlers, on U.S. produced honey or honey products shall be \$0.0075 per pound of honey or honey products handled.

(b) *Imported honey and honey products.* The assessment rate on honey or honey products imported into the United States shall be \$0.015 per pound of honey or honey products imported, which equals the combined rate at which domestic honey produced in the U.S. and handled is assessed. Of this \$0.015 total, \$0.0075 per pound represents the assessment due from the importer and \$0.0075 represents the assessment due from the handler and paid by the importer on behalf of the handler. The importer of imported honey and honey products shall pay the assessment of \$0.015 per pound to the Board through the U.S. Customs Service at the time of entry of such honey and honey products into the United States.

(c) Except as provided in § 1240.42 and in paragraphs (b), (d), and (k) of this section, the first handler shall be responsible for the collection of such assessment from the producer and from the handler and payment thereof to the Board. The first handler shall maintain separate records for each producer's honey handled, including honey produced by said handler.

(d) Producer-packers shall pay to the Board the assessment on all honey or honey products for which they act as first handler, in addition to the assessment owed on honey they produce.

(e) Should a first handler fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board.

(f) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs pursuant to this part. Such regulations may provide for different handler, importer, producer, or producer-packer payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(g) There shall be a late-payment charge imposed on any handler,

importer, producer, or producer-packer who fails to remit to the Board the total amount for which any such handler, importer, producer, or producer-packer is liable on or before the payment due date established by the Board under paragraph (f) of this section. The amount of the late-payment charge shall be set by the Board subject to approval by the Secretary.

(h) There shall also be imposed on any handler, importer, producer, or producer-packer subject to a late-payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler, importer, producer, or producer-packer is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(i) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(j) Should the U.S. Customs Service fail to collect an assessment from an importer, the importer shall be responsible for the payment of the assessment to the Board.

(k) Whenever a loan is made on honey under a USDA loan program, the Secretary shall provide that the assessment be deducted from the proceeds of the loan or the loan deficiency payment, if applicable, and that the amount of such assessment shall be forwarded to the Board, except that the assessment shall not be deducted by the Secretary in the case of a honey marketing cooperative approved by the USDA Commodity Credit Corporation that deducts the assessment from its member producers. As soon as practicable after the assessment is deducted from the loan funds or loan deficiency payment, the Secretary shall provide the producer with proof of payment of the assessment.

(l) The Board is authorized to accept advance payment of assessments by handlers, importers, or producer-packers that shall be credited toward any amount for which the handlers, importers or producer-packers may become liable. The Board is not obligated to pay interest on any advance payment.

(m) The Board is authorized to borrow money for the payment of expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

32. Amend § 1240.42 by revising paragraph (a); removing paragraphs (c) and (f); redesignating paragraphs (d) and (e) as (c) and (d), respectively; and revising newly designated paragraphs (c) and (d) to read as follows:

§ 1240.42 Exemption from assessment.

(a) A producer who produces less than 6,000 pounds of honey per year, a producer-packer who produces and handles less than 6,000 pounds of honey or honey products per year, an importer who imports less than 6,000 pounds of honey or honey products per year, or a handler who handles less than 6,000 pounds of honey or honey products per year shall be exempt from assessment provided such honey or honey products are distributed directly through local retail outlets such as roadside stands, farmers markets, groceries, or other outlets as otherwise determined by the Secretary during such year.

* * * * *

(c) If, after a person has been exempt from paying assessments for any year under this section, and such person no longer meets the requirements of this section for an exemption, such person shall file a report with the Board in the form and manner prescribed by the Board and pay an assessment on or before March 15 of the subsequent year on all honey or honey products produced, handled, or imported by such person during the year for which the person claimed the exemption.

(d) The Board may recommend to the Secretary that honey exported from the United States be exempted from the provisions of this subpart and include procedures for the refund of assessments on such honey and such safeguards as may be necessary to prevent improper use of this exemption.

33. Add a new § 1240.44 to read as follows:

§ 1240.44 Inspection and monitoring system.

(a) The Board is authorized to develop and recommend to the Secretary, and the Secretary shall have the authority to approve or disapprove, a system or program for monitoring the purity of honey and honey products being sold for domestic consumption in, or for export from, the United States. Such system or program may include inspection and testing procedures to monitor the purity of honey or to detect adulterated honey.

(b) The Board may recommend and the Secretary may issue rules and regulations as are necessary to implement such system or program as authorized by the Act.

34. Add a new § 1240.45 to read as follows:

§ 1240.45 Voluntary quality assurance program.

(a) The Board is authorized to develop and carry out a voluntary quality

assurance program concerning purity standards for honey and honey products. The Secretary shall have the authority to approve or disapprove such program.

(b) The program may include the following components:

(1) The establishment of an official Board seal of approval to be displayed on honey and honey products which meet such standards of purity as are established under the program;

(2) Actions to encourage producers, handlers, and importers to participate in the program;

(3) Actions to encourage consumers to purchase honey and honey products bearing the official seal of approval; and

(4) Periodic inspections by the Secretary, or other parties approved by the Secretary, of honey and honey products of persons who participate in the program.

(c) To be eligible to display the official seal of approval under paragraph (b)(1) of this section on a honey or honey product, a producer, handler, or importer shall participate in the voluntary program described in paragraph (a) of this section.

(d) Any program and related rules and regulations for establishing and carrying out a voluntary quality assurance program may be in addition to or independent of any program, rule, or regulation involving an inspection and monitoring system under § 1240.44.

35. Add a new § 1240.46 to read as follows:

§ 1240.46 Minimum purity standards.

The Board is authorized to develop and recommend to the Secretary and the Secretary shall have the authority to approve or disapprove the establishment of minimum purity standards and related rules and regulations for honey and honey products designed to maintain a positive and wholesome marketing image for honey and honey products.

36. Revise § 1240.50 to read as follows:

§ 1240.50 Reports.

Each handler, importer, producer, or producer-packer subject to this part shall be required to report to the employees of the Board, at such time and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(a) For producers or producer-packers: the quantity of honey produced and the total number of bee colonies maintained.

(b) For handlers or producer-packers: the total quantity of honey acquired

during the reporting period; the total quantity of honey and honey products handled during such period; the amount of honey acquired from each producer, giving the name and address of each producer; the assessments collected during the reporting period; the quantity of honey processed for sale from a producer-packer's own production; and a record of each transaction for honey on which assessments had already been paid, including a statement from the seller that the assessment had been paid.

(c) For importers: the total quantity of honey and honey products imported during the reporting period and a record of each importation of honey or honey products during such period, giving the quantity, date, country of origin, and port of entry.

(d) For persons who have an exemption from assessments under § 1240.42 (a) and (b), such information as deemed necessary by the Board, and approved by the Secretary, concerning the exemption including disposition of exempted honey.

37. Revise § 1240.51 to read as follows:

§ 1240.51 Books and records.

Each handler, importer, producer, producer-packer, or any person who is exempt from assessments shall maintain and during normal business hours make available for inspection by employees or agents of the Board or the Secretary, such books and records as are necessary to carry out the provisions of this part, including such records as are necessary to verify any required reports. A member or alternate member of the Board is prohibited from conducting such inspections. Such books and records shall be maintained for two years beyond the first period of their applicability.

38. Revise § 1240.52 to read as follows:

§ 1240.52 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 1240.50 and 1240.51 shall be kept confidential by all employees and agents of the Board and all officers and employees of the Department and shall not be disclosed to the public. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart: Except that nothing in this subpart shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers or importers subject to this subpart, if such statements do not identify the information furnished by any person;

(b) The publication by direction of the Secretary, of the name of any person convicted of violating this subpart, together with a statement of the particular provisions of this subpart violated by such person.

39. Revise § 1240.61 to read as follows:

§ 1240.61 Right of the Secretary.

All fiscal matters, programs or plans, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

40. Amend § 1240.62 by:

- a. Revising paragraph (b);
- b. removing paragraph (c) and redesignating paragraph (d) as (c); and
- c. revising newly designated paragraph (c) to read as follows:

§ 1240.62 Suspension or termination.

* * * * *

(b) Except as otherwise provided in paragraph (c) of this section, five (5) years from the date the Secretary issues an order authorizing the collection of assessments on honey under provisions of this subpart, and every five (5) years thereafter, the Secretary shall conduct a referendum to determine if honey producers, handlers, producer-packers, and importers subject to assessment favor the termination or suspension of this subpart.

(c) The Secretary shall hold a referendum on the request of the Board, or when petitioned by 10 percent or more of the honey producers, handlers, producer-packers, and importers subject to assessment under this subpart to determine if the honey producers, handlers, producer-packers, and importers favor termination or suspension of this subpart. A referendum under this paragraph may not be held more than once every two (2) years. If the Secretary determines, through a referendum conducted pursuant to this paragraph, that continuation of this subpart is approved, any referendum otherwise

required to be conducted under paragraph (b) of this section shall not be held less than five (5) years after the date the referendum was conducted under this paragraph.

41. Revise the heading for Subpart—General Rules and Regulations to read as follows:

Subpart B—General Rules and Regulations

42. Revise the heading for Subpart—Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order to read as follows:

Subpart C—Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order

Dated: February 14, 2000.

Kathleen A. Merrigan,
Administrator, Agricultural Marketing Service.

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