

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

[FV-00-701 FR]

RIN 0581-AB84

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

SUMMARY: This rule amends the honey research and promotion program by: changing the size and composition of the National Honey Board (Board); changing nomination and eligibility requirements for handlers, importers, and representatives of cooperatives on the Board; changing the term of office for members of the Board and the National Honey Nominations Committee; authorizing the Board to develop a voluntary quality assurance program; removing the requirement for small companies to file for an exemption under the program in order to avoid paying assessments; requiring producers to submit reports to the Board and to maintain records; and adding statutory requirements for continuance referenda and evaluations. Amendments to the Honey Research, Promotion, and Consumer Information Act (Act) require that these changes be made to the program. The Act authorized additional changes, but they failed to receive the approval of the voters in a referendum held in September 2000.

EFFECTIVE DATE: May 31, 2001.**FOR FURTHER INFORMATION CONTACT:**

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SUPPLEMENTARY INFORMATION: The honey research and promotion program will be changed by amending the Honey Research, Promotion, and Consumer Information Order (Order) (7 CFR part 1240). The changes to the Order are being made as a result of changes made by Congress to the Honey Research, Promotion, and Consumer Information Act (Act) (Pub. L. 98-690; enacted October 30, 1984; 7 U.S.C. 4601-4613, as amended) on June 23, 1998 (Pub. L. 105-185). The honey program operates under the Act.

Prior documents. A proposed rule on amending the Order was published in

the **Federal Register** on February 28, 2000 (65 FR 10600) with a 60-day comment period. The comment period ended on April 28, 2000. A second proposed rule and a referendum order were published in the **Federal Register** on August 7, 2000 (65 FR 48324).

In addition, USDA published a proposed rule on the referendum procedures which were used in the referendum on the votable amendments in the **Federal Register** on May 15, 2000 (65 FR 30924) with a 30-day comment period. The final rule on the referendum procedures was published in the August 7, 2000, issue of the **Federal Register** (65 FR 48318).

Question and Answer Overview*Why Is The Honey Program Being Changed?*

The honey program is being changed because the Act which authorizes the program was amended in 1998. The amendments to the Act require the same changes to be made to the program.

What Are the Major Changes That Will be Made to the Honey Program?

The major changes affect: (1) The composition and size of the National Honey Board (Board); (2) nomination and eligibility requirements for handlers, importers, and representatives of cooperatives on the Board; (3) the term of office for members of the Board and the National Honey Nominations Committee (Committee); (4) authorization for the voluntary quality assurance program; (5) exemption, reporting, and recordkeeping procedures; and (6) requirements for referenda and evaluations.

How Would the Size and Composition of the Board Change?

The Board is currently composed of seven producers, two importers (or one importer and one exporter), two handlers, one representative of a cooperative, one public member, and their alternates.

This rule will change the importer-exporter position on the Board to another importer position to provide more importer input into Board deliberations. In addition, the public member position will be eliminated, and at least 50 percent of the Board members will have to be producers. In addition, the Board will be required to periodically review the producer regions and number of importer positions on the Board and recommend any appropriate changes to the U.S. Department of Agriculture (USDA or the Department).

How Will Nomination and Eligibility Procedures Change?

Currently, handlers, importers, and others submit the names of handlers and importers to the Committee for consideration as the official nominees to serve on the Board as handler members and alternates. This rule will allow handler and importer organizations to be certified to submit the names of handlers and importers to the Committee as well. In addition, national honey marketing cooperatives will be allowed to submit names to the Committee for consideration as the official nominees for the cooperative representative and alternate on the Board.

This rule also adds a new eligibility requirement for importer members and alternates. In order to be eligible to serve in these positions, importers must receive at least 75 percent of their gross honey business income from the sale of imported honey and honey products during any three of the preceding five years. Previously, any person who imported any amount of honey was eligible to serve on the Board as an importer member or alternate.

What Are the Changes in the Terms of Office for Committee and Board Members?

This rule will change the beginning of the term of office for Committee members from January 1 to July 1. This will facilitate more timely nomination and appointment of new members.

In addition, the amended Act authorized the Secretary to stagger the terms of office of Board members periodically to help ensure continuity of Board membership. For example, currently the term of office for the producer members and alternates from four of the seven producer regions end on December 31, 2001. This means that over 50 percent of the producer members on the Board could change in one year. This is not desirable. Therefore, the Secretary will work with the Board and the Committee to determine which of the regional producer positions should have a different term of office.

What Is a Voluntary Quality Assurance Program?

After this rule becomes effective, the Board will be allowed to develop rules and regulations for a voluntary quality assurance program for review by USDA. Under this type of program, the Board may develop an official seal of approval to be used only by producers, handlers, and importers who participate in the program. In order to participate in the

program, the products of the industry members would be required to meet certain purity standards. The goal of this type of program is to increase demand for honey and honey products by increasing consumer confidence in the honey and honey products on the market.

How Would Exemption and Recordkeeping Requirements Change?

Producers, producer-packers, and importers who sell (1) less than 6,000 pounds of honey annually and (2) the honey is sold through local retail outlets, such as roadside stands, farmers markets, or groceries will no longer have to request an exemption from the Board in order to avoid paying assessments under the program. In addition, producers would be required to keep records for a period of two years just like producer-packers, handlers, and importers. The Board and the Department need access to certain industry records in order to enforce the assessment and reporting provisions of the program.

What Are the Statutory Requirements on Continuance Referenda and Evaluations?

The Act requires the Secretary of Agriculture (Secretary) to conduct a continuance referendum on the honey program at least once every five years. When the Act was amended in 1998, it specified that continuance referenda be held no more than once every two years. Therefore this rule adds that limitation on the frequency of continuance referenda to the Order.

In 1996 [7 U.S.C. 7401], Congress required all national research and promotion boards to conduct independent evaluations of their programs at least once every five years. This rule will simply include that requirement in the Order.

What Happened to the Other Proposed Amendments?

The other proposed amendments (votable amendments) did not receive enough support from the industry in the September 2000 referendum. Therefore, they are not being implemented at this time. However, the amended Act authorizes the Secretary to conduct rulemaking and a referendum to implement one or more of the votable amendments at a later time, if recommended by the Board or the honey industry.

The votable amendments would have: (1) Required the Board to reserve 8 percent of its funds annually for beekeeping and production research; (2) authorized the Board to develop

recommendations for purity standards and an inspection and monitoring system to enhance the image of honey and honey products; (3) added two handler-importer members and alternates to the Board; (4) reduced the producer assessment from 1 cent per pound to 0.75 cents per pound; (5) added a new assessment on handlers of 0.75 cents per pound on the domestic honey that they handle; and (6) increased the importer assessment from 1 cent per pound to 1.5 cents per pound on imported honey and honey products.

Executive Orders 12866 and 12988

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

In addition, this rule has been reviewed under E.O. 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act allows producers, producer-packers, importers, and handlers (if covered by the program) to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law. In the petition, the person may request a modification of the Order or an exemption from the Order. Petitions must 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. Afterwards, the Secretary will issue a ruling on the petition.

If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Regulatory Flexibility Act and Paperwork Reduction Act

Regulatory Flexibility Analysis. In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has examined the impact of changes to the honey program on small honey producers, producer-packers, and importers. The final regulatory flexibility analysis was included in the

proposed rule that was published in the **Federal Register** on August 7, 2000.

However, that analysis included the impact of both the votable and non-votable amendments to the Order. This rule will implement only the non-votable amendments because the votable amendments were not approved in the September 2000 referendum. Accordingly, the applicable analysis is as follows.

The Small Business Administration (SBA) (13 CFR 121.201) defines small agricultural producers as those having annual receipts of no more than \$500,000. Small producer-packers, handlers, and importers fit into the SBA definition for small agricultural service firms with annual receipts of less than \$5 million.

According to National Honey Board (Board) records, 2,885 producers paid \$1,864,590 in assessments in 1999. That represents \$646 in assessments on 64,600 pounds of honey per producer. At the average wholesale price for honey in 1999 of 65.5 cents per pound, the average producer had \$42,313 in receipts, well below the \$500,000 threshold.

Similarly, Board records indicate that 348 importers paid \$1,743,021 in assessments in 1999. That represents \$5,008 in assessments on 500,800 pounds of honey per importer. At the average wholesale price for honey of 65.5 cents per pound, the average importer had \$328,024 in receipts, well below the \$5 million threshold.

Therefore, a majority of the producers, producer-packers, handlers, and importers who would be affected by the changes to the Order may be considered small entities. In addition, an estimated three handler-importer organizations whose membership includes these entities would be affected by the changes to the Order.

The changes in the nomination procedures for Board members would benefit handlers, importers, and marketing cooperatives by giving them increased input on the individuals who are nominated by the National Honey Nominations Committee (Committee). The new eligibility requirements for persons serving as importer members and alternates on the Board and the elimination of the authority for an exporter to serve in an importer position on the Board will also benefit importers by providing them more representation on the Board and, thus, more input into Board decisions on how their assessment dollars are spent.

The change in the term of office for Committee members will greatly facilitate the ability of state beekeeper associations to submit nominees to

serve on the Committee to USDA in a timely manner and help assure that the Secretary is able to appoint new members to the Committee prior to the beginning of the term of office. The new requirement that 50 percent of the members of the Board must be producers reflects the amended provisions of the Act.

In addition, producers, handlers, and importers would benefit from the changes on reconstituting the Board. Reconstitution of Board members will be based on changes in the geographical distribution of honey production in the United States and on changes in the proportion of assessments paid on domestic honey and on imported honey and honey products, and this should provide more equitable treatment and fairness of representation on the Board for producers, handlers, and importers alike.

All segments of the honey industry could benefit from the implementation of a quality assurance program and a related inspection and monitoring system because they have the potential to increase wholesale and retail confidence in the quality of the honey that is marketed. This means that consumers, food service operators, and manufacturers would be likely to have more confidence in the quality of honey and honey products available on the market. This, in turn, is expected to generate increased sales of honey in the United States and abroad, which would benefit producers, handlers, and importers alike. Handlers would also have confidence in the purity of the honey they are buying from producers or importers.

Adding reporting and recordkeeping requirements for producers will assist the Board in periodically collecting production information to help identify industry trends for use in program planning and evaluation. This information will help guide the Board in its decision making as well as be provided to industry members for their use in making individual marketing decisions. The amendment will also assist the Board in enforcing the assessment and reporting provisions of the Order which is expected to help ensure that everyone who is subject to assessments is paying assessments.

Elimination of the requirement for persons who are eligible to claim an exemption to file an application will significantly reduce the paperwork burden on the industry as well as reduce the Board's costs in managing the program.

The new statutory guideline for the timing of referenda reduces the possibility that the operations of the

Board will be disrupted so frequently that the effectiveness of the Board's programs would be compromised.

In addition, removing obsolete provisions from the Order and rewriting other provisions will make the Order more understandable to the public, the industry, and the Board and its staff.

We have also revised the paperwork and recordkeeping impact as described in the August 7, 2000, by eliminating references and information relating to the votable amendments that will not be implemented as a result of this final rule. Therefore, the remaining paperwork and recordkeeping impact is described below.

One amendment requires producers to maintain and make available to the Board and the Secretary books and records. Another requires producers to periodically report to the Board information pertaining to the quantity of honey produced and the total number of bee colonies maintained. Currently, only handlers, importers, and producer-packers are required to maintain records and provide reports to the Board or the Secretary. This information is necessary for enforcement of the Act. It is most likely that the information requested from producers would be obtained through periodic audits.

Based on this expanded reporting authority, there are also plans to collect production information periodically from producers. At this time, the Board's plans are tentative on how and when producers are to report the prescribed information due to mailing costs and certain other factors relating to the content and design of the information collection. The 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 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 will be eliminated. Pursuant to the 1998 changes to the Act, the Order will 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 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 will 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 5,043 respondents would be \$25,245 annually. The 5,043 respondents are as follows: 5,024 producers, 7 handlers, 7 importers, 2 cooperative representatives, and 3 organizations. The total cost for producers is \$25,120 or \$5.00 per producer per response. The total cost for handlers is \$35 or \$5.00 per handler. The total cost for importers is \$35 or \$5 per importer. The total cost for cooperative representatives is \$10 or \$5 per cooperative representative. The total cost for organizations is \$45 or \$15 per organization.

The impact of the recordkeeping requirement provided for in this rule on small entities will be minimal. This recordkeeping requirement is consistent with prudent business practices and is not expected to 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 keep these records for commercial and/or tax purposes.

The forms to be modified will 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 amendments to the Order. The information required has been designed to coincide with normal industry business practices to minimize the burden on the industry.

With regard to alternatives, the provisions of the amendments to the Order in this rule have been carefully reviewed, and every effort has been made to minimize any unnecessary costs or requirements while maintaining consistency with the provisions of the Act, as amended.

There are no federal rules that duplicate, overlap, or conflict with this rule.

Paperwork Reduction Act. In accordance with the OMB regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that are imposed by this rule have been approved by OMB under OMB Control Nos. 0581-0093 and 0505-0001.

This information differs from what was published in the August 7, 2000, proposed rule because the August 7, 2000, proposed rule included the burden associated with amendments that will not be implemented by this final rule. Following are the increases and decreases in burden that will become effective with this final rule.

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

OMB Number: 0581-0093. *Expiration Date of Approval:* March 31, 2001.

OMB Number: 0505-0001. *Expiration Date of Approval:* July 31, 2002.

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

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

Producer recordkeeping and reporting (increase under OMB No. 0581-0093). 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. This rule changes the Order 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 is not expected to impose any undue costs or significant burdens on a vast majority of producers.

In addition, the Board will have the authority to require producers to report information pertaining to the quantity of honey produced and the total number of bee colonies maintained. Currently, the Board's authority to request reports extends only to handlers, importers, and producer-packers. It is most likely that this information will be obtained from producers through periodic audits.

Based on this expanded reporting authority, the Board also plans to collect the quantity of honey produced and number of bee colonies maintained periodically from producers. At this time, the Board's plans are tentative on how and when producers are to report this information due to mailing costs and certain other factors relating to the content and design of the possible information collection.

Candidate Profile form (increase under OMB No. 0581-0093). This rule also revises qualification requirements for serving on the Board. This information will be collected on the Board's Candidate Profile form and be used by the Board's staff and the Committee to determine the qualifications of candidates. It is anticipated that the basic background information to be collected would be readily accessible or otherwise obtained from records currently maintained by

those persons who would be candidates to serve on the Board.

Nominee background form (decrease under OMB No. 0505-0001 and increase under OMB No. 0581-0093). Currently, nominees for positions on the Board or the Committee must submit a copy of a USDA background form (AD-755) under OMB No. 0505-0001 to the Secretary. In the future, nominees will be required to submit a copy of an AMS background form (AMS-755) under OMB No. 0581-0093. The information collected on the two forms is identical.

Report by honey handler and importer organizations and national honey marketing cooperatives (increase under OMB No. 0581-0093). This rule will allow handler and importer organizations and national honey marketing cooperatives to submit the names of handlers, importers, and cooperative representatives, respectively, to the Committee for nomination to the Board. However, the organizations must submit information in a report to the Secretary in order to be certified as eligible to submit the names.

In addition to increasing the burden under OMB No. 0581-0093, this rule also decreases the burden by 41.5 hours because it removes the requirement for producers, producer-packers, and importers to file an application with the Board in order to qualify for exemption from assessments.

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

Under this rule, 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 in this rule.

The estimated total annual cost of maintaining records and providing the information to the Board and USDA by an estimated 5,043 respondents would be \$25,245 annually. The 5,043 respondents are as follows: 5,024 producers, 7 handlers, 7 importers, 2 cooperative representatives, and 3 organizations. The total cost for producers is \$25,120 or \$5.00 per producer per response. The total cost for handlers is \$35 or \$5.00 per handler. The total cost for importers is \$35 or \$5

per importer. The total cost for cooperative representatives is \$10 or \$5 per cooperative representative. The total cost for organizations is \$45 or \$15 per organization.

(1) *PRODUCER RECORDKEEPING AND REPORTING (NEW BURDEN UNDER OMB No. 0581-0093).*

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 (in their capacity as producers).

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

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

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

(2) *CANDIDATE PROFILE (NEW BURDEN UNDER OMB No. 0581-0093).*

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: 15 Producers, 4 handlers, 4 importers, and 1 cooperative representative.

Estimated Number of Respondents: 24.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12 hours.

(3) *BACKGROUND INFORMATION FORM (DECREASE UNDER OMB No. 0505-001 AND NEW BURDEN UNDER OMB No. 0581-0093).*

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

Respondents: 9 producers, 3 handlers, 3 importers, and 1 cooperative representative.

Estimated Number of Respondents: 16.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 8 hours.

(4) *A REPORT FROM HONEY HANDLER AND IMPORTER ORGANIZATIONS AND NATIONAL HONEY MARKETING COOPERATIVES (NEW BURDEN UNDER OMB No. 0581-0093).*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.5 hours per response for each organization.

Respondents: Honey handler and importer organizations.

Estimated Number of Respondents: 3.
Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 4.5 hours.

Comments on the regulatory and paperwork impact of the amendments to the Order were invited in the February 28, 2000, proposed rule. Three comments were submitted by the April 28, 2000, deadline, and were discussed in the August 7, 2000, proposed rule on these amendments.

Background

As explained above, the Act, which authorizes the honey research and promotion program, was amended in 1998. Subsequently, the U.S. Department of Agriculture (USDA or the Department) requested interested persons to submit proposals for making comparable changes to the program, which operates under the Honey Research, Promotion, and Consumer Information (Order).

The National Honey Board (Board)—with the support of three honey industry groups—submitted a proposal containing regulatory text for all of the changes authorized or required by the 1998 amendments to the Act. Proposals submitted by eight other organizations or persons did not include regulatory text. Therefore, the Department published the Board's proposal, with a few changes, as a proposed rule in the **Federal Register** on February 28, 2000 (65 FR 10600), with a 60-day comment period. The eight other submissions were made part of the rulemaking record and are considered comments on the proposed changes.

A total of 30 comments were received on the proposed amendments. These included the original eight comments that were received in response to USDA's request for proposals in 1999, some of which were resubmitted by the commenter. Seventeen commenters supported the amendments, 12 commenters opposed one or more of the amendments, and one commenter merely expressed an opinion on the direction the Board should take. As discussed in the August 7, 2000, rule, some changes were made to the proposed amendments as a result of comments received.

USDA held a national referendum on the votable amendments from September 5 through 29, 2000. In the referendum, only 30.33 percent of the voters, who represented 51.26 percent of the pounds of honey produced, handled, and imported by the voters in the referendum, approved the votable

amendments. Therefore, only the non-votable amendments will be made effective by this final rule. In order to implement only the non-votable amendments, it has been necessary to delete language related to the votable amendments and to rewrite some paragraphs as a result of the deletions. Some renumbering of sections and paragraphs has also occurred.

This rule will amend the Order by: (1) Changing the size and composition of the Board; (2) changing nomination and eligibility requirements for handlers, importers, and representatives of cooperatives on the Board; (3) changing the term of office for members of the Board and the National Honey Nominations Committee (Committee); (4) authorizing the Board to develop a voluntary quality assurance program; (5) removing the requirement for small companies to file for an exemption under the program in order to avoid paying assessments; (6) requiring producers to provide reports and maintain records; and (7) adding statutory requirements for continuance referenda and evaluations.

The amendments that appeared in the August 7, 2000, proposed rule that will not be made by this rule are: (1) A requirement for the Board to reserve 8 percent of its funds annually for beekeeping and production research; (2) authorization for the Board to develop 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-importer members and alternates to the Board; (4) a reduction in the producer assessment from 1 cent per pound to 0.75 cents per pound; (5) a new assessment on handlers of 0.75 cents per pound on the domestic honey that they handle; and (6) an increase in the importer assessment from 1 cent per pound to 1.5 cents per pound on imported honey and honey products.

Board size and composition. The Board is currently composed of seven producers, two importers (or one importer and one exporter), two handlers, one representative of a cooperative, one public member, and their alternates.

This rule will change the importer-exporter position on the Board to another importer position to provide more importer input into Board deliberations. In addition, the public member position will be eliminated, and at least 50 percent of the Board members will have to be producers.

Also, this rule will add a new section to the Order to provide for reconstitution of the Board every five years. The new section provides

procedures for making changes in the boundaries of the domestic producer regions and for adding importer members if warranted. The representation of importers will not change unless the proportion of assessments owed by importers compared with the proportion of assessments owed by producers on domestic honey changes by more than 6 percent from the proportions determined by the Board for its 1996 fiscal period. The first review is required before the next continuance referendum on the program, which will be held in 2001.

Nominating and eligibility requirements. This rule will also change some of the nomination procedures under the Order. Currently, handlers, importers, and others submit the names of handlers and importers to the Committee for consideration as the official nominees to serve on the Board as handler members and alternates. This rule will allow handler and importer organizations to be certified to submit the names of handlers and importers to the Committee as well. In addition, national honey marketing cooperatives will be allowed to submit names to the Committee for consideration as the official nominees for the cooperative representative and alternate on the Board.

This rule also adds a new eligibility requirement for importer members and alternates. In order to be eligible to serve in these positions, importers must receive at least 75 percent of their gross honey business income from the sale of imported honey and honey products during any three of the preceding five years. Previously, any person who imported any amount of honey was eligible to serve on the Board as an importer member or alternate.

Terms of office. In addition, this rule will change the beginning of the term of office for Committee members from January 1 to July 1. This will facilitate more timely nomination and appointment of new members.

Also, the amended Act authorized the Secretary to stagger the terms of office of Board members periodically to help ensure continuity of Board membership. For example, currently the term of office for the producer members and alternates from four of the seven producer regions end on December 31, 2001. This means that over 50 percent of the producer members on the Board could change in one year. This is not desirable. Therefore, the Secretary will work with the Board and the Committee to determine which of the regional producer positions should have a different term of office.

Voluntary quality assurance program. After this rule is implemented the Board may develop rules and regulations for a voluntary quality assurance program for review by USDA. The voluntary quality assurance program may include the establishment of an official Board seal of approval to be displayed on honey and honey products or producers, handlers, and importers that participate in the voluntary program and are found to meet such standards of purity as are established under the program. It may also include actions to encourage the honey industry to participate in the program and to encourage consumers to purchase honey and honey products that bear the official seal of approval. In addition, the Department or other parties approved by the Department may perform periodic inspections of the participants in the voluntary program. Before a voluntary quality assurance program will be implemented, USDA will issue the proposed rules and regulations relating to the program for public comment.

Exemptions, reports, and recordkeeping. Producers, producer-packers, and importers who sell (1) less than 6,000 pounds of honey annually and (2) the honey is sold through local retail outlets, such as roadside stands, farmers markets, or groceries will no longer have to request an exemption from the Board in order to avoid paying assessments under the program. In addition, producers would be required to keep records for a period of two years just like producer-packers, handlers, and importers. The Board and the Department need access to certain industry records in order to enforce the assessment and reporting provisions of the program.

Continuance referenda. The Act requires the Secretary of Agriculture to conduct a continuance referendum on the honey program at least once every five years. When the Act was amended in 1998, it specified that continuance referenda be held no more than once every two years. Therefore, this rule adds the limitation on the frequency of continuance referenda to the Order.

Evaluations. This rule also includes a requirement for the Board to conduct an independent evaluation of the effectiveness of its programs at least once every five years. The requirement was imposed by Congress on all national research and promotion programs in 1996.

Miscellaneous changes. Finally, this rule removes obsolete and gender-specific language from the Order and makes a number of changes for syntax and for clarity. Most of these changes were in the August 7, 2000, proposed

rule. Additional changes made by this rule include removing gender-specific language from §§ 1240.34(b), 1240.38(j), and 1240.62(a), expanding § 1240.5 *Department* to read *Department or USDA*, and adding the tenure limitation for Committee members back into paragraph (a)(3) of § 1240.32.

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, 7 CFR part 1240 is 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 of part 1240 to read as set forth above.

3. Add a heading for a new subpart A, consisting of §§ 1240.1 through 1240.67, to read as follows:

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

4. Remove § 1240.43.

4a. Redesignate §§ 1240.1 through 1240.14, 1240.16 through 1240.22, and 1240.44 as follows:

Old section	New section
1240.1	1240.26
1240.2	1240.1
1240.3	1240.18
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
1240.16	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
1240.44	1240.43

5. Revise newly designated § 1240.2 to read as follows:

§ 1240.2 Board.

Board or National Honey Board means Honey Board, the administrative body established pursuant to § 1240.30.

6. Revise newly designated § 1240.3 to read as follows:

§ 1240.3 Committee.

Committee means the National Honey Nominations Committee established pursuant to § 1240.32.

7. Add a new § 1240.5 to read as follows:

§ 1240.5 Department or USDA.

Department or USDA means the United States Department of Agriculture.

8. Revise newly designated § 1240.8 to read as follows:

§ 1240.8 Handle.

Handle 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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 and alternate handler members of the Board under § 1240.32.

16. 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 and alternate importer members of the Board under § 1240.32.

17. 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.

18. Revise § 1240.30 to read as follows:

§ 1240.30 Establishment and membership.

A Honey Board is established to administer the terms and provisions of this part. The Board shall consist of twelve (12) 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; 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.

19. 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's or alternate's successor meets all qualifications and is appointed by the Secretary.

20. Amend § 1240.32 as follows:

- a. By revising paragraphs (a)(1) and (a)(3), and (b)(1) and (b)(2) respectively;
- b. Removing paragraph (b)(6);
- c. Redesignating paragraphs (b)(7) and (b)(8) as (b)(6) and (b)(7) respectively;
- d. Revising newly designated paragraphs (b)(6) and (b)(7); and
- e. Adding paragraphs (b)(8), (b)(9), (b)(10), (b)(11), and (b)(12).

The revisions and additions to § 1240.32 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 beekeeper 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. No member shall serve more than two consecutive three-year terms. 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 an importer.

(8) 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, and cooperative member positions due to become vacant. Selection of nominees by the Committee will be pursuant to the following:

(j) Nominations for producer members and alternate producer members will be from the regions in which one or more vacancies 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; and

(iv) 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.

(9) *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.

(10) *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) Substantial 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.

(11) 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 handlers and importers who are not members 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 handlers and importers who are not members when making the nominations of the organization to the Committee, if nonmembers indicate an interest in serving on the Board.

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

21. 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 of domestic honey. The Board shall conduct the initial review required by this paragraph prior to the first continuance referendum conducted after May 31, 2001.

(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; and/or

(ii) 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 the addition of members pursuant to paragraph (b)(1)(ii) of this section unless the proportion of assessments owed by importers compared with the proportion of assessments owed on domestic honey by producers changed by more than 6 percent from the base period proportion determined in accordance with paragraph (d) of this section.

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

(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 period 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.

22. Amend § 1240.34 as follows:

a. By revising paragraphs (a) and (b); and

b. By removing "Honey Nominations Committee and adding "Committee" in its place in paragraph (c).

The revisions of paragraphs (a) and (b) 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, the affected member and/or alternate may serve out the term for which such person was appointed, or if a member, whose position is based on the member's status as an 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.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary shall remove such member from office.

* * * * *

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

§ 1240.35 Procedure.

(a) A majority of members, of which at least 50 percent are producers, 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.

* * * * *

24. Amend § 1240.38 by revising paragraphs (c), (d), (e), (j), (g), (k), (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;

* * * * *

(j) To submit to the Secretary such information pertaining to this subpart as the Secretary may request;

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

(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.

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

RESEARCH, PROMOTION, CONSUMER EDUCATION, AND INDUSTRY INFORMATION

26. 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 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) 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

(8) 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)(7) 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 this paragraph.

27. Amend § 1240.40 by revising paragraphs (a) and (b) 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.

* * * * *

28. Revise § 1240.41 to read as follows:

§ 1240.41 Assessments.

(a) *Domestic honey and honey products.* The assessment rate on honey produced in the United States and handled shall be 1 cent per pound of honey produced.

(b) *Imported honey and honey products.* The assessment rate on honey or honey products imported into the United States shall be 1 cent per pound of honey or honey products imported. The importer of imported honey and honey products shall pay the assessment to the Board through the U.S. Customs Service at the time of entry of such honey and honey products into the United States. 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.

(c) *General.* (1) Except as provided in § 1240.42 and in paragraphs (c)(2) and (e) of this section, the first handler shall be responsible for the collection of such assessment from the producer 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.

(2) 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.

(3) 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.

(4) 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.

(d) *Late payment.* (1) There shall be a late-payment charge imposed on any importer, handler, or producer-packer who fails to remit to the Board the total amount for which any such importer, producer, or producer-packer is liable on or before the payment due date established by the Board. The amount of the late-payment charge shall be set by the Board subject to approval by the Secretary.

(2) There shall also be imposed on any importer, handler, 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 importer, handler, or producer-packer is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

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

(e) *Honey under loan.* Whenever a loan is made on honey under an 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 Department's 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.

(f) *Advance payment.* 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.

29. Amend § 1240.42 as follows:

- a. By revising paragraph (a);
- b. By removing paragraphs (c) and (f);
- c. By redesignating paragraphs (d) and (e) as (c) and (d), respectively; and
- d. By revising newly designated paragraphs (c) and (d).

The revisions to § 1240.42 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, or an importer who imports 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 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.

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

§ 1240.44 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.

31. 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 and 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.

32. 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 under this subpart 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 fiscal period of their applicability.

33. 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.

34. 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.

35. Amend § 1240.62 as follows:

a. By removing "he/she" and adding "the Secretary" in its place in paragraph (a);

b. By removing paragraph (c);

c. By redesignating paragraph (d) as (c); and

d. By revising newly designated paragraph (c).

The revisions to § 1240.62 read as follows:

§ 1240.62 Suspension or termination.

* * * * *

(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 and importers subject to assessment under this subpart to determine if the honey producers 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.

Dated: April 23, 2001.

Kenneth C. Clayton,

Acting Administor, Agricultural Marketing Service.

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