

and Budget and assigned OMB Control No. 0581-0093 under the Paperwork Reduction Act of 1980.

#### Prior Documents in This Proceeding

*Proposed Rule:* Issued January 18, 2008; published January 28, 2008 (73 FR 4762).

#### Statement of Consideration

This final rule amends the Fluid Milk Promotion order (Order) by reducing the burden of late payment fees on processors who mistakenly underreport their pounds of fluid milk processed and marketed commercially (excluding direct delivery to the residence of a consumer). Processors will not be required to pay late-fee charges on additional assessments owed the National Fluid Milk Processor board (Board) provided: (1) that no more than two erroneous reports have occurred in the preceding 12-month period and; (2) the processor pays its past due assessments not later than the last day of the month following notification by the Board that additional assessments are due. If more than two erroneous reports have occurred in the preceding 12-month period or the processor fails to submit a past due assessment when notified, late-payment charges will be assessed in accordance with § 1160.214 of the Order.

The Fluid Milk Promotion Order (7 CFR Part 1160) is authorized under the Fluid Milk Promotion Act of 1990 (Act) (7 U.S.C. 6401-6417). The Order, in § 1160.211(a)(1) provides that each fluid milk processor shall pay to the Board an assessment of \$0.20 per hundredweight on fluid milk products processed and marketed commercially in consumer-type packages in the United States by such fluid milk processors. The Order further provides in § 1160.213 that if the Board or the Secretary determines through an audit of a processor's reports, records, books or accounts or through some other means that additional money is due to the Board, the Board is to notify that processor of the amount due or overpaid. If the processor owes money to the Board, the processor is to remit the underpaid amount by the next due date as provided in § 1160.211 of the Order. If the processor has overpaid, that amount is credited to the processor's account and applied against amounts due in succeeding months.

At the request and on behalf of the Board, Milk Market Administrators verify the total pounds of fluid milk products processed and commercially marketed in consumer-type packages (excluding delivering directly to the residence of a consumer) that were

reported to the Board by the milk processors. Total fluid milk products are the sum of fluid milk product route sales and packaged fluid milk products sold to any other plant, less any fluid milk products purchased from other plants. The results of the Market Administrators' verification are forwarded to the Board, and, in accordance with § 1160.214(a), any unpaid assessments are increased by 1.5 percent each month beginning with the day following the date such assessments were due.

Interested parties were provided an opportunity to file comments on the proposed rule. One comment, filed on behalf of the Milk Processor Education Program (MilkPEP) supported the proposed changes to the Order. MilkPEP stated that the proposed changes would encourage and ensure the receipt of assessments owed to the Board.

#### List of Subjects in 7 CFR Part 1160

Fluid milk, Milk, Promotion.

■ For the reasons set forth in the preamble, 7 CFR part 1160 is amended as follows:

#### PART 1160—FLUID MILK PROMOTION PROGRAM

■ 1. The authority citation for 7 CFR Part 1160 continues to read as follows:

**Authority:** 7 U.S.C. 6401-6417.

■ 2. Section 1160.213 is revised to read as follows:

#### § 1160.213 Adjustment of accounts.

Whenever the Board or the Secretary determines through an audit of a processor's reports, records, books or accounts or through some other means that additional money is due the Board or to such processor from the Board, the Board shall notify that person of the amount due or overpaid. If the processor owes money to the Board, it shall remit that amount by the next date for remitting assessments as provided in § 1160.211. For the first two erroneous reports submitted by a processor in the preceding 12-month period, late-payment charges assessed pursuant to § 1160.214 shall not begin to accrue until the day following such date. For all additional erroneous reports submitted by a processor during the 12-month period, late-payment charges shall accrue from the date the payment was due. If the processor has overpaid, that amount shall be credited to its account and applied against amounts due in succeeding months.

Dated: May 15, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8-11355 Filed 5-20-08; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Parts 1212 and 1240

[Docket No. AMS-FV-06-0176; FV-03-704-FR]

**RIN 0581-AC37**

#### Establishment of Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order and Suspension of Assessments Under the Honey Research, Promotion, and Consumer Information Order

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

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Packers Order). The Packers Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act). Under the Packers Order, first handlers and importers will pay an assessment of \$0.01 per pound on honey and honey products. First handlers and importers of less than 250,000 pounds of honey and honey products annually will be exempt from the assessment. The assessments will be remitted to the Honey Packers and Importers Board (Board) to conduct a generic program of promotion, research, consumer education, and industry information to maintain and expand markets for honey and honey products. A referendum was conducted among honey first handlers and importers between April 2 and April 16, 2008. Seventy-eight percent of those covered under the Packers Order—representing ninety-two percent of the volume of those voting in the referendum—favored implementation of the program. This rule also suspends the requirement of the existing Honey Research, Promotion, and Consumer Information Order (Current Order) and regulations authorized under the Honey Research, Promotion, and Consumer Information Act (Honey Act) that honey producers and importers pay to the National Honey Board (Current Board) an assessment in the amount of \$0.01 per pound on honey and honey

products. The provisions of the Current Order and regulations issued thereunder will be terminated at a later date.

**DATES:** *Effective Date:* May 22, 2008.

**FOR FURTHER INFORMATION CONTACT:** Kathie Notoro, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, Room 0632-S, 1400 Independence Ave, SW., Washington, DC 20250-0244; telephone (202) 720-9915 or (888) 720-9917 (toll free), Fax: (202) 205-2800 or e-mail [kathie.notoro@usda.gov](mailto:kathie.notoro@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425) and under the Honey Research, Promotion, and Consumer Information Act (Honey Act) (7 U.S.C. 4601-4613). The Current Order appears at 7 CFR Part 1240.

A proposed rule with the Packers Order was published in the **Federal Register** on June 4, 2007 [72 FR 30924], with a 60-day comment period which ended on August 3, 2007. That rule also proposed termination of the Current Order and regulations in 7 CFR Part 1240. A second proposed rule and referendum order was published in the **Federal Register** on March 3, 2008 [73 FR 11474]. A final rule including the referendum procedures was published in the **Federal Register** the same day [73 FR 11470].

First handlers and importers who handled 250,000 pounds or more of honey or honey products, during the period from January 1, 2007, through December 31, 2007, were eligible to vote in the April 2-16, 2008, referendum. Seventy-eight percent of those voting in the referendum, representing ninety-two percent of the volume who voted in the referendum, approved the program. The referendum was conducted by mail ballot.

This 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.

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

Section 524 of the 1996 Act provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act and section 10 of the Honey Act, a person subject to an order may file a petition with the U.S. Department of Agriculture (Department) stating that the order, any provision of the order, or any obligation imposed in connection with the order is not established in accordance with the law, and requesting a modification of the order or an exemption from the order. Any such petition must be filed within two years after the effective date of an order, provision or obligation subject to challenge. The petitioner would have the opportunity for a hearing on the petition. Thereafter, the Department would issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the 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 entry of the Department's final ruling.

In deciding if the Packers Order was consistent with and would effectuate the purpose of the 1996 Act, the Secretary considered the existence of other federal research and promotion programs issued under other laws. The Current Order appears at 7 CFR Part 1240 and is issued under the Honey Act.

Similar to the Current Order, the goals of the Proposed Order are to: (1) Develop and finance an effective and coordinated research, promotion, industry information, and consumer education program for honey and honey products; (2) strengthen the position of the honey industry; and (3) develop, maintain, and expand existing markets for honey and honey products.

Taking into account the duplicative nature of the Packers Order with the Current Order, the Department proposed terminating the Current Order and its regulations. This rule suspends the requirements of the Current Order and regulation that honey producers and importers pay assessments on honey and honey products. The provisions of the Current Order and regulations issued thereunder will be terminated at a later date. The Department will then appoint not more than five trustees from the Current Board to liquidate the affairs of the Current Board.

### Background

The 1996 Act, which became effective on April 4, 1996, authorizes the Department to establish a national research and promotion program covering domestic and imported honey and honey products. The National Honey Packers and Dealers Association (Association) submitted a proposal for a

national promotion, research and information order for honey and honey products on March 17, 2006. The Department published the Association's proposal, with modifications, for public comment in the June 4, 2007, **Federal Register** [72 FR 30924]. Seventy-six comments were received by the August 3, 2007, deadline. These comments, and related changes to the Packers Order, were discussed in the March 3, 2008, proposed rule published in the **Federal Register** [73 FR 11482] which included a Referendum Order. The representative period for establishing voter eligibility for the referendum was the period from January 1 to December 31, 2007. A referendum was conducted by mail ballot from April 2 to April 16, 2008. In the referendum, first handlers and importers of 250,000 pounds or more of honey and honey products voted to implement the program.

The program will be administered by the Board under USDA supervision. The Board will have ten members; including three first handler representatives, two importer representatives, one importer-handler representative, one national honey marketing cooperative representative, and three producer representatives and their alternates.

Under the Packers Order, "first handler" would be defined to mean the first person who handles honey or honey products, and would include a producer who handles his or her own production. In addition, "handle" would be defined to mean process, package, sell, transport, purchase or in any other way place honey or honey products, or cause them to be placed, in commerce. This term would include selling unprocessed honey that will be consumed without further processing or packaging, but would not include the transportation of unprocessed honey by the producer to a handler or transportation by a commercial carrier for the account of the first handler or producer.

The Packers Order provides that each first handler pay an assessment to the Board at the rate of \$0.01 per pound of domestically produced honey or honey products that the handler handles. The Packers Order establishes that each first handler responsible for remitting assessments shall pay the Board the amount due on a monthly basis no later than the fifteenth day of the month following the month in which the honey or honey products were marketed. The funds generated through the mandatory assessments on domestically handled and imported honey or honey products would be used to pay for promotion, research, and consumer and industry information as well as the

administration, maintenance, and functioning of the Board.

The Packers Order defines "importer" to mean any person who imports honey or honey products from outside the United States for sale in the United States as a principal or as an agent, broker, or consignee for any person. An importer is also listed in the import records as the importer of record for such honey or honey products with U.S. Customs and Border Protection (Customs).

Section 516(f) of the 1996 Act allows assessments on imports at a rate comparable to the rate for domestics. The Packers Order treats importers in the same manner as domestic handlers in terms of the assessment rate: Each importer would pay an assessment to the Board at the rate of \$0.01 per pound of honey or honey products the importer imports into the United States. An importer must pay the assessment to the Board through Customs when the honey or honey products being assessed enters the United States. If Customs does not collect an assessment from an importer, the importer would be responsible for paying the assessment directly to the Board.

The assessment levied on domestically handled and imported honey and honey products would be used to pay for promotion, research, and consumer education and industry information as well as the administration, maintenance, and functioning of the Board. Expenses incurred by the Department in implementing and administering the Packers Order, including referenda costs, also would be paid from assessments.

Persons failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures as set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by the Department [60 FR 12533, March 7, 1995]. Persons also would have to pay interest and late payment charges on late assessments as prescribed in the Packers Order.

Under the Packers Order, a first handler who handles less than 250,000 pounds of honey or honey products per year or an importer who imports less than 250,000 pounds of honey or honey products per year, would be exempt from paying assessments.

In addition, a first handler who operates under an approved NOP system plan, handles only products eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, is exempt from the paying assessments under the Packers

Order. An importer who imports only products eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, also is exempt from paying assessments.

The Packers Order allows the Board to recommend to the Secretary an increase or decrease to the assessment, as it deems appropriate by at least a two-thirds vote of members present at a meeting of the Board. The Board may not recommend an increase in the assessment of more than \$0.02 per pound of honey or honey products and assessments may not be increased by more than \$0.0025 in any single fiscal year.

Although the 1996 Act allows for credits of assessments for generic and branded activities, the Association who proposed the Packers Order did not elect to include it.

As the Packers Order establishes that first handlers and importers will be responsible for paying assessments, the Packers Order states that these two groups will also be responsible for filing specific reports and maintaining records regarding the amount of honey and honey products brought to the market.

First handlers will be required to file reports and maintain records on the total quantity of honey and honey products acquired during the reporting period, the quantity of honey processed for sale from the handler's own production, and the quantity of honey purchased from a handler or importer responsible for paying the assessment due. The Board will recommend to the Department specific reporting periods and dates when such reports are due to the Board.

Unless provided by Customs, importers will be required to report the total quantity of honey and honey products imported during each reporting period, and keep a record of each lot of honey and honey products imported during such period, including the quantity, date, country of origin, and port of entry. Under the Packers Order, Customs would collect assessments on imported honey and honey products and remit the funds to the Board.

Each first handler and importer, including those who would be exempt from paying assessments under the Packers Order, will be required to maintain any books and records necessary to carry out the provisions of the Packers Order for two years beyond the fiscal period to which they apply. This would include the books and records necessary to verify any required reports. These books and records would be made available to the Board's or Department's employees or agents

during normal business hours for inspection if necessary.

The Packers Order provides that all officers, employees, and agents of the Department and of the Board are required to keep confidential all information obtained from persons subject to the Order. This information will be disclosed only if the Department considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Department or to which the Department or any officer of the Department is a party.

However, the issuance of general statements based on reports or on information relating to a number of persons subject to the Packers Order would be permitted, if the statements do not identify the information furnished by any person. Finally, the publication, by direction of the Department, of the name of any person violating the Packers Order and a statement of the particular provisions of the Packers Order violated by the person will be allowed.

It is estimated that revenue for the Packers Order will be around or slightly more than \$3 million. Of this amount, about 64 percent would be generated by assessments on imported honey and honey products.

The importer representatives must import at least 75 percent of the honey or honey products they market in the United States. The importer-handler representative must also import at least 75 percent of the honey or honey products they market in the United States and must handle at least 250,000 pounds annually. In addition, the producer representatives must produce a minimum of 150,000 pounds of honey in the United States annually based on the best three year average of the most recent five calendar years.

Each term of office on the Board would end on December 31, with new terms of office beginning on January 1, with the exception of the initial Board's term of office.

First handlers, producers, and a national honey marketing cooperative representative would represent those entities in the United States. The United States is defined to include collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States. Board members from each of these groups would be nominated by national organizations representing each of them respectively. Honey is produced in almost all of the 50 States. The top ten producing States in 2006 included North Dakota, South

Dakota, California, Florida, Minnesota, Montana, Texas, Wisconsin, Idaho, and New York.

Importers and the importer-handler on the Board will be nominated by national organizations representing importers. Such importers and the importer-handler will represent those individuals who import for sale honey or honey products into the United States as a principal or as an agent, broker, or consignee for any person who produces honey or honey products outside the United States. All qualified national organizations representing first handlers, producers, importers and honey-marketing cooperatives will have the opportunity to participate in a nomination caucus for the purposes of preparing a slate of candidates for the above positions submitted to the Department for consideration.

Eligible organizations must submit nominations to the Department six months before a new term of office begins, except for the initial appointments to the Board. To become a qualified national organization representing first handlers, importers, or producers under the Packers Order, each such organization will be required to meet the following criteria: (1) The majority of its voting membership must consist of first handlers or producers of honey, and in the case of an importing organization, the membership must represent at least a majority of the volume of honey or honey products imported into the United States; (2) it must have a history of stability and permanency and have been in existence for more than 1 year; (3) its primary purpose must be to promote honey first handlers', importers' or producers' welfare; (4) it must derive a portion of its operating funds from first handlers, importers, or producers; and (5) it must demonstrate it is willing and able to further the 1996 Act's purposes.

Further, any organization representing first handlers or producers must represent a substantial number of first handlers or producers who market or produce a substantial volume of honey or honey products in at least 20 States.

To be eligible as a qualified national honey-marketing cooperative, the Department must certify that an entity qualifies under the definition in section 1212.42(d). Such an entity shall not be eligible for certification as a qualified national organization representing producer interests.

If the Department determines that there are no qualified national organizations representing first handlers, importers, producers, and honey-marketing cooperatives interests, individuals who have paid their

assessments to the Board in the most recent fiscal year could submit nominations for those positions specified.

The Packers Order indicates that the Board may recommend to the Department that a member be removed from office if the member consistently refuses to perform his or her duties or engages in dishonest acts or willful misconduct. The Department may remove the member if the Department finds that the Board's recommendation demonstrates cause.

The 1996 Act provides that to ensure fair and equitable representation, the composition of a Board shall reflect the geographic distribution of the production of the agriculture commodity in the United States and the quantity or value of the agriculture commodity imported into the United States.

Under the Packers Order at least once every five years, but not more frequently than once in each three year period, the Board would review the geographical distribution in the United States of the production of honey covered by the Packers Order and quantity or value of honey and honey products imported into the United States. The review, based on a three-year average, would enable the Board to evaluate whether the Board membership is reflective of the composition of the honey industry.

Board members could serve terms of three years and be able to serve a maximum of two consecutive terms under the Packers Order. When the Board is first established, one producer, one first handler, one importer, and the representative of a national honey cooperative would serve a two-year term. One producer, one first handler, and the importer-handler representative would serve a three-year term of office. One producer, one first handler, and one importer would serve a four-year term of office. This would allow the terms be staggered on the Board. No member or alternate may serve more than two consecutive terms, excluding any initial two-year term of office. Determination of which of the initial members and their alternates would serve two-year, three-year or four-year terms, would be designated by the Department.

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

Under the Packers Order, a quorum is met if a majority of members are present and at least one first handler and one importer are present. Also, under the

Packers Order, there is a 2/3 vote requirement for recommendations to the Secretary of a change in assessment.

The Order provides that 5% of the Board's anticipated revenue must be set aside for production research.

The provisions regarding referendum procedures in the Packers Order provide for a referendum every seven years.

The Department also is suspending assessments under the Current Order and regulation. The Current Order provisions and regulations will be terminated at a later date. A separate rule will be published in the **Federal Register** terminating the Current Order provisions and regulations. The Department will then appoint not more than five trustees from the Current Board to liquidate the affairs of the Current Board.

### Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) is required to examine the impact of the 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 would not be disproportionately burdened.

The 1996 Act authorizes generic promotion, research, and information programs for agricultural commodities. Development of such programs under this authority are in the national public interest and vital to the welfare of the agricultural economy of the United States and to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

The proponent Association submitted the Packers Order to: (1) Develop and finance an effective and coordinated program of research, promotion, industry information, and consumer education regarding honey and honey products; (2) strengthen the position of the honey industry; and (3) maintain, develop, and expand existing markets for honey and honey products.

The goals of the Current Order are similar. Therefore, taking into account the duplicative nature of the Packers Order with the Current Order, the Department is suspending in this rule assessment collection under the Current Order and its regulations and will terminate the provisions of the Current Order and regulations issued thereunder at a later date.

The Packers Order is authorized under the 1996 Act, while the Current Order is authorized under the Honey

Act. A major difference between the Current Order and the Packers Order is that the Packers Order provides for assessments to be paid by first handlers and importers that handled or imported 250,000 pounds or more of honey or honey products a year rather than producers and importers of less than 6,000 pounds per year under the Current Order.

Administrative expenses under the Packers Order will be reduced because the number of entities assessed under the Packers Order is reduced. Approximately 2,700 entities are assessed under the Current Order, while about 75 entities will be assessed under the Packers Order. Administrative costs will be reduced with fewer entities paying assessments and filing reports, and the assessment collection process will be simplified.

First handlers, importers, and producers will have the opportunity to serve on the 10 member Board. Each member will have an alternate. The Board will consist of three first handler representatives, three honey producers, two importer representatives, one importer-handler representative and one representative from a national honey marketing cooperative. The Secretary of Agriculture (Secretary) will appoint members to the Board from nominees submitted in accordance with the Order.

Section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the order. An initial referendum was conducted prior to putting the Packers Order in effect. Seventy-eight percent of first handlers and importers representing ninety-two percent of the volume voting in the referendum approved the program. Every seven years, the Department shall conduct a referendum to determine whether first handlers and importers of honey or honey products favor the continuation, suspension, or termination of the Packers Order. In addition, the Department could conduct a referendum at any time; at the request of 10 percent or more of the first handlers and importers required to pay assessments; or at the request of the Board.

There are approximately 45 first handlers and 30 importers of honey or honey products that will pay assessments under the Packers Order. The Current Honey Board consists of 12 members; seven producers, two handlers, two importers, and one marketing cooperative member. The Packers Board would consist of 10 members; three first handlers, two importers, one importer-handler, three

producers, and one marketing cooperative member. Under the Packers Order, entities in the board member nomination process will include qualified national organizations representing first handlers, importers, producers, and cooperative interests.

The Packers Order also provides for first handlers and importers to file reports to the Board. In addition, the Packers Order requires that qualified national organizations and nominated producers provide information for the nomination and appointment process to the Board. While the Packers Order will impose certain recordkeeping requirements on first handlers, importers, and any producers who seek nomination and appointment to the Board, information required under the Packers Order could be compiled from records currently maintained and will involve existing clerical or accounting skills. The forms require the minimum information necessary to effectively carry out the requirements of the Packers Order, and their use is necessary to fulfill the intent of the 1996 Act. An estimated 118 respondents would provide information to the Board. They will be: 45 first handlers, 30 importers, 6 producers (for nominations purposes), 10 certified organizations (for nomination purposes), 25 handlers/importers exempt under the program, and 2 organic handlers/importers (for exemption purposes). The estimated total cost of providing information to the Board by all respondents will be approximately \$11,550. This total has been estimated by multiplying 350 total hours required for reporting and recordkeeping by \$33, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics.

The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of \$750,000 or less annually and small agricultural service firms as those having annual receipts of \$6.5 million or less. Using these criteria under the Packers Order, most producers, and first handlers will be considered small businesses, while most importers will not. Further, the members of cooperative organizations and other nominating organizations would reflect this same size composition.

National Agricultural Statistic Service (NASS) data reports that U.S. production of honey, from producers with five or more colonies, totaled 155 million pounds in 2006. The top ten producing States in 2006 included

North Dakota, South Dakota, California, Florida, Minnesota, Montana, Texas, Wisconsin, Idaho, and New York. To avoid disclosing data for individual operations, NASS statistics do not include Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, Oklahoma, Rhode Island, and South Carolina. NASS reported the value of honey sold in 2006 was \$161,314,000. Honey prices increased during 2006 to 104.2 cents, up 14 percent from 91.8 cents in 2005.

Based on the assessment reports in connection with the Current Order and recorded by Customs, four countries account for 72 percent of the honey and honey products imported into the United States. These countries and their share of the imports are: China (28%); Argentina (21%); Vietnam (13%); and Canada (10%). Other countries combined totaled 28 percent of honey and honey products imported to the United States.

At the initial rate, revenue for the Packers Order will be approximately \$3 million. In 2006, \$3.6 million of assessment income was collected from the honey industry, of which 36 percent was from domestic production and 64 percent from imports. In 2006, 155 million pounds of honey or honey products were produced in the United States, 279.4 million pounds were imported and 7.6 million pounds were exported. The value of production in 2006 was \$161.3 million. The average price for honey in the U.S. in 2006 was 104.2 cents per pound. Therefore, the estimated assessment revenue as a percentage of total grower revenue (using 2006 as a model) could be estimated at 1.8 percent.

This final rule also suspends assessment collections under the Current Order representing \$3.6 million on an annual basis.

The honey industry and consumers would benefit from additional information that may be conveyed through the plans and projects regarding honey and honey products. Another benefit to first handlers and importers of honey or honey products would be that they would have more representation on the Board and have additional input into Board decisions regarding the plans and programs under the Packers Order.

Associations and related industry media received news releases and other information regarding the implementation of the Packers Order, termination of the Current Order, and the referendum process. Furthermore, all information is available electronically.

The Board could develop guidelines for compliance with the Packers Order.

The Board could recommend to the Secretary changes in programs, plans, projects, budgets, and any rules and regulations including the assessment rate, that might be necessary for the administration of the program. The administrative expenses of the Board are limited by the 1996 Act to no more than 15 percent of assessment income. This does not include USDA costs for program oversight.

With regard to alternatives, the 1996 Act itself provides for authority to tailor a program according to the individual needs of an industry. Provision is made for permissive terms in an order in § 516 of the 1996 Act, and other sections provide for alternatives.

The Packers Order is designed to: (1) Develop and finance an effective and coordinated research, promotion, industry information, and consumer education program for honey and honey products; (2) strengthen the position of the honey industry; and (3) maintain, develop, and expand existing markets for honey and honey products. Additionally, the Packers Order will require first handlers of honey or honey products, instead of honey producers, to pay assessments to the Board that administers the program. While assessments will impose some additional costs on first handlers, the reporting requirements are minimal because handlers under the Current Order already report to the Current Board. Also, the costs are minimal and uniform on all first handlers. These costs should be offset by the benefits derived by the operation of the Packers Order. Under the Packers Order importers will continue to pay assessments and be responsible for reporting and recordkeeping.

Section 516 authorizes an order to provide for exemption of *de minimis* quantities (the proponent Association proposed 250,000 pounds or less as a *de minimis* quantity) of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports.

Also, under authority provided by 7 U.S.C. 7401, the Packers Order exempts first handlers who operate under an approved National Organic Program (NOP) (7 CFR part 205) system plan, handle only products that are eligible to be labeled as 100 percent organic under the NOP, and are not a split operation, from paying assessments. The Packers

Order also states that importers who import only products that are eligible to be labeled as 100 percent organic under the NOP, and are not a split operation, shall be exempt from paying assessments.

The Packers Order includes provisions for domestic market expansion and improvement, and reserve funds. There will be a decrease in the reporting and recordkeeping burden cost from \$129,459 under the Current Order to \$11,550 under the Packers Order. The reduced cost is due to a reduction in the total of individuals required to report.

Assessments under the Current Order and regulations are suspended in this rule. The provisions of the Current Order and its regulations will be terminated at a later date. With the exception of the Current Order, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with the Packers Order.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS has submitted to OMB a new information collection that has been assigned OMB control number 0581-NEW.

*Title:* Advisory Committee and Research and Promotion Board Background Information.

*OMB Number for background form AD-755:* (Approved under OMB No. 0505-0001).

*Expiration Date of approval:* March 31, 2009.

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

*OMB Number:* 0581-NEW.

*Expiration Date of Approval:* 3 years from approval date.

*Type of Request:* New information collection for research and promotion programs.

*Abstract:* The information collection requirements in the request are essential to carry out the intent of the 1996 Act.

Under the Packers Order, first handlers would be required to pay assessments to and file reports with the Board. While the Packers Order will impose certain recordkeeping requirements on first handlers, information required under the Packers Order could be compiled from records currently maintained by such handlers. Such records will be retained for at least two years beyond the marketing year of their applicability.

Under the Packers Order importers are responsible to pay assessments. Unless provided by Customs, importers must report the total quantity of product

imported during the reporting period and a record of each importation of such product during such period, giving quantity, date, and port of entry. Under the Packers Order, Customs would collect assessments on imported honey and honey products and remit the funds to the Board.

An estimated 118 respondents would provide information to the Board. They would be: 45 first handlers, 30 importers, 6 producers (for nominations purposes), 10 certified organizations (for nomination purposes), 25 handlers/importers exempt under the program, and 2 organic handlers/importers (for exemption purposes). The estimated total cost of providing information to the Board by all respondents would be \$11,550. This total has been estimated by multiplying 350 total hours required for reporting and recordkeeping by \$33, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics.

The Packers Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other honey programs administered by the Department.

The forms will require the minimum information necessary to effectively carry out the requirements of the Packers Order, and their use is necessary to fulfill the intent of the 1996 Act. 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. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information monthly during the production season will coincide with normal industry business practices. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. The requirement to keep records for two years is consistent with normal industry practices. There is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this rule include:

(1) A Background Information Form AD-755 (Approved under OMB Form No. 0505-0001).

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 0.5 hours per response for each Board nominee.

*Respondents:* First handlers, importers, producers and cooperative organizations.

*Estimated number of Respondents:* 40 for initial nominations, 13 in subsequent years.

*Estimated number of Responses per Respondent:* 1 every 3 years. (0.3)

*Estimated Total Annual Burden on Respondents:* 20 hours for the initial nominations and 6 hours annually thereafter.

(2) An Exemption Application for First Handlers and Importers Who Will Be Exempt From Assessments.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each exempt first handler and importer.

*Respondents:* Exempt First handlers and importers.

*Estimated Number of Respondents:* 25.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 6.25 hours.

(3) Monthly Report by Each First Handler of Honey.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.5 hours per each first handler reporting on honey handled.

*Respondents:* First handlers.

*Estimated number of Respondents:* 45.

*Estimated number of Responses per Respondent:* 12.

*Estimated Total Annual Burden on Respondents:* 270 hours.

(4) A Requirement to Maintain Records Sufficient to Verify Reports Submitted Under 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:* First handlers and importers.

*Estimated Number of Respondents:* 118.

*Estimated Total Annual Burden of Respondents:* 59 hours.

(5) Application for Reimbursement of Assessment.

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.25 hours per request for reimbursement.

*Respondents:* First handler and importers.

*Estimated Number of Respondents:* 20.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 5 hours.

(6) Application for Certification of Organizations.

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.5 hours per application.

*Respondents:* First handlers, importers, producers and marketing cooperatives.

*Estimated Number of Respondents:* 10.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 5 hours.

(7) Nomination Appointment Form.

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.5 hours per application.

*Respondents:* First handlers, importers, producers and marketing cooperatives.

*Estimated Number of Respondents:* 10.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 5 hours.

(8) Organic Exemption Form.

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.5 hours per exemption form.

*Respondents:* First handlers and importers.

*Estimated Number of Respondents:* 2.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 1 hour.

Comments were invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the Department's oversight of the Order, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the collection of information, including the validity of the methodology and assumption 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 collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. No comments were received on the collection of information part of this rule.

The Packers Order is summarized as follows:

Section 1212.1 through Section 1212.32 of the Packers Order define certain terms, such as honey, first handler, and importer. Section 1212.30 is corrected to include the term "or part thereof."

Sections 1212.40 through 1212.48 of the Packers Order include provisions relating to the Honey Packers and Importers Board. These provisions cover establishment and membership; term of office; nominations and appointments; removal and vacancies; procedure, reimbursement and attendance; powers; duties; and reapportionment of the Board, which is the governing body authorized to administer the Order through the implementation of programs, plans, projects, budgets, contracts to promote and disseminate information about honey, subject to oversight by the Department. Section 1212.46(e) and 1212.47(e) are corrected in this rule to specify the authority of the Board to enter into contracts and agreements as provided for in the Act.

Sections 1212.50 through 1212.55 cover budget review and approval; financial statements; authorize the collection assessments; specify how assessments will be used; specify who pays the assessment and how; exemptions; and authorize the imposition of a late-payment charge on past-due assessments. Section 1212.52(g)(1) is corrected to change the word "establishes" to "recommends."

The proponent Association recommended an assessment rate of \$0.01 per pound for domestic honey and imported honey and honey products. The assessment rate will be reviewed and may be modified after the first referendum is conducted as stated in section 1212.81(a)(1).

Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collections procedures as set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by USDA [60 FR 12533, March 7, 1995].

Sections 1212.60 through 1212.62 address programs, plans, and projects; require the Board to periodically conduct an independent review of its overall program; and address patents, copyrights, trademarks, information, publications, and product formulations developed through the use of assessment funds.

Sections 1212.70 through 1212.72 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of

information from such books, records, or reports.

Sections 1212.80 through 1212.88 describe the rights of the Secretary; address referenda; authorize the Secretary to suspend or terminate the Packers Order when deemed appropriate; prescribe proceedings after suspension or termination; and address personal liability, separability, amendments, and the OMB control number.

The Department conducted a referendum among first handlers and importers of honey and honey products from April 2 through April 16, 2008, to determine whether the Packers Order would become effective. The representative period for establishing voter eligibility was from January 1 through December 31, 2007. First handlers and importers who handled or imported 250,000 pounds or more of honey and honey products during the representative period were eligible to vote. Seventy-eight percent of those voting, representing ninety-two percent of the volume voted in the referendum favored implementation of the program.

After consideration of all relevant material presented, including the initial proposal, comments received, and the referendum results, it is found that the Packers Order, authorized under the Commodity Promotion, Research, and Information Act of 1996, is consistent with and effectuates the declared policy and purpose of the 1996 Act. Further, after taking into account the duplicative nature of the Proposed Order with the Current Order, it is determined that the requirements of the Current Order and regulations issued thereunder that honey producers and importers pay assessments on honey and honey products no longer tends to effectuate the declared policy of the Honey Research, Promotion, and Consumer Information Act and are hereby suspended.

It is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) In order to avoid duplication with the Packers Order, this action suspends the requirements of the Current Order and regulations that producers and importers remit assessments; and (2) implementation of the Packers Order is needed as soon as possible to begin assessments under that program and to initiate the process of establishing the Honey Packers and Importers Board.

#### List of Subjects in 7 CFR Parts 1212 and 1240

Administrative practice and procedure, Advertising, Consumer Education, Honey and Honey products, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, Title 7, Chapter XI of the Code of Federal Regulations is amended as follows:

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

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

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

■ 2. In § 1240.41, a note is added immediately following the section to read as follows:

##### § 1240.41 Assessments.

\* \* \* \* \*

**Note To § 1240.41:** The requirement to pay producer and importer assessments is suspended indefinitely as of May 22, 2008.

■ 3. In § 1240.115, a note is added immediately following the section to read as follows:

##### § 1240.115 Levy of assessments.

\* \* \* \* \*

**Note To § 1240.115:** The requirement to pay producer and importer assessments is suspended indefinitely as of May 22, 2008.

#### PART 1212—HONEY PACKERS AND IMPORTERS RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

■ 4. The authority citation for Part 1212 is revised to read as follows:

**Authority:** 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 5. Add subpart A to part 1212 to read as follows:

#### Subpart A—Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order

##### Definitions

Sec.

- 1212.1 Act.
- 1212.2 Board.
- 1212.3 Conflict of interest.
- 1212.4 Department.
- 1212.5 Exporter.
- 1212.6 First handler.
- 1212.7 Fiscal period for marketing year.

- 1212.8 Handle.
- 1212.9 Honey.
- 1212.10 Honey products.
- 1212.11 Importer.
- 1212.12 Importer-Handler Representative.
- 1212.13 Information.
- 1212.14 Market or marketing.
- 1212.15 Order.
- 1212.16 Part and subpart.
- 1212.17 Person.
- 1212.18 Plans and programs.
- 1212.19 Producer.
- 1212.20 Promotion.
- 1212.21 Qualified national organization representing handler interests.
- 1212.22 Qualified national organization representing importer interests.
- 1212.23 Qualified national organization representing producer interests.
- 1212.24 Qualified national organization representing cooperative interests.
- 1212.25 Referendum.
- 1212.26 Research.
- 1212.27 Secretary.
- 1212.28 Suspend.
- 1212.29 State.
- 1212.30 Terminate.
- 1212.31 United States.
- 1212.32 United States Customs Service.

#### Honey Packers and Importers Board

- 1212.40 Establishment and membership.
- 1212.41 Term of office.
- 1212.42 Nominations and appointments.
- 1212.43 Removal and vacancies.
- 1212.44 Procedure.
- 1212.45 Reimbursement and attendance.
- 1212.46 Powers.
- 1212.47 Duties.
- 1212.48 Reapportionment of Board membership.

#### Expenses and Assessments

- 1212.50 Budget and expenses.
- 1212.51 Financial statements.
- 1212.52 Assessments.
- 1212.53 Exemption from assessment.
- 1212.54 Operating reserve.
- 1212.55 Prohibition on use of funds.

#### Promotion, Research, and Information

- 1212.60 Programs, plans, and projects.
- 1212.61 Independent evaluation.
- 1212.62 Patents, copyrights, inventions, product formulations, and publications.

#### Reports, Books, and Records

- 1212.70 Reports.
- 1212.71 Books and records.
- 1212.72 Confidential treatment.

#### Miscellaneous

- 1212.80 Right of the Secretary.
- 1212.81 Referenda.
- 1212.82 Suspension or termination.
- 1212.83 Proceedings after termination.
- 1212.84 Effect of termination or amendment.
- 1212.85 Personal liability.
- 1212.86 Separability.
- 1212.87 Amendments.
- 1212.88 OMB Control Numbers.

**Subpart A—Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order**

**Definitions**

**§ 1212.1 Act.**

“Act” means the Commodity Promotion, Research, and Information Act of 1996, (7 U.S.C. 7411–7425), and any amendments to that Act.

**§ 1212.2 Board.**

“Board” or “Honey Packers and Importers Board” means the administrative body established pursuant to § 1212.40, or such other name as recommended by the Board and approved by the Department.

**§ 1212.3 Conflict of interest.**

“Conflict of interest” means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

**§ 1212.4 Department.**

“Department” means the United States Department of Agriculture, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary’s stead.

**§ 1212.5 Exporter.**

“Exporter” means any person who exports honey or honey products from the United States.

**§ 1212.6 First handler.**

“First handler” means the first person who buys or takes possession of honey or honey products from a producer for marketing. If a producer markets honey or honey products directly to consumers, that producer shall be considered to be the first handler with respect to the honey produced by the producer.

**§ 1212.7 Fiscal period.**

“Fiscal period” means a calendar year from January 1 through December 31, or such other period as recommended by the Board and approved by the Secretary.

**§ 1212.8 Handle.**

“Handle” means to process, package, sell, transport, purchase or in any other way place honey or honey products, or causes them to be placed, in commerce. This term includes selling unprocessed honey that will be consumed without further processing or packaging. This term does not include the transportation

of unprocessed honey by the producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed for the account of the first handler or producer.

**§ 1212.9 Honey.**

“Honey” means the nectar and saccharine exudations of plants that are gathered, modified, and stored in the comb by honeybees, including comb honey.

**§ 1212.10 Honey products.**

“Honey products” mean products where honey is a principal ingredient. For purposes of this subpart, a product shall be considered to have honey as a principal ingredient if the product contains at least 50% honey by weight.

**§ 1212.11 Importer.**

“Importer” means any person who imports for sale honey or honey products into the United States as a principal or as an agent, broker, or consignee of any person who produces honey or honey products outside 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.

**§ 1212.12 Importer-Handler Representative.**

“Importer-Handler Representative” means any person who is an importer and first handler, who must import at least 75 percent of the honey they market in the United States and must handle at least 250,000 pounds annually.

**§ 1212.13 Information.**

“Information” means activities or programs designed to develop new and existing markets, new and existing marketing strategies and increased efficiency and activities to enhance the image of honey and honey products. These include:

(a) Consumer education, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of honey and honey products; and

(b) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the honey industry, and activities to enhance the image of the honey industry.

**§ 1212.14 Market or marketing.**

(a) “Marketing” means the sale or other disposition of honey or honey products in any channel of commerce.

(b) “Market” means to sell or otherwise dispose of honey or honey products in interstate, foreign, or intrastate commerce.

**§ 1212.15 Order.**

“Order” means the Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order.

**§ 1212.16 Part and subpart.**

“Part” means the Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order (Order) and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a “subpart” of such part.

**§ 1212.17 Person.**

“Person” means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

**§ 1212.18 Plans and programs.**

“Plans and programs” mean those research, promotion and information programs, plans, or projects established pursuant to this Order.

**§ 1212.19 Producer.**

“Producer” means any person who is engaged in the production and sale of honey in any State and who owns, or shares the ownership and risk of loss of the production of honey or a person who is engaged in the business of producing, or causing to be produced, honey beyond personal use and having value at first point of sale.

**§ 1212.20 Promotion.**

“Promotion” means any action, including paid advertising and public relations that presents a favorable image for honey or honey products to the public and food industry with the intent of improving the perception and competitive position of honey and stimulating sales of honey or honey products.

**§ 1212.21 Qualified national organization representing first handler interests.**

“Qualified national organization representing first handler interests” means an organization that the Secretary certifies as being eligible to nominate first handler and alternate first handler members of the Board under § 1212.42.

**§ 1212.22 Qualified national organization representing importer interests.**

“Qualified national organization representing importer interests” means an organization that the Secretary certifies as being eligible to nominate

importer, importer-handler, and alternate importer and importer-handler members of the Board under § 1212.42.

**§ 1212.23 Qualified national organization representing producer interests.**

“Qualified national organization representing producer interests” means an organization that the Secretary certifies as being eligible to nominate producer and alternate producer members of the Board under § 1212.42.

**§ 1212.24 Qualified national organization representing cooperative interests.**

“Qualified national organization representing cooperative interests” means an organization that the Secretary certifies as being eligible to nominate cooperative and alternate cooperative members of the Board under § 1212.42.

**§ 1212.25 Referendum.**

“Referendum” means a referendum to be conducted by the Secretary pursuant to the Act whereby first handlers and importers shall be given the opportunity to vote to determine whether the implementation of or continuance of this part is favored by a majority of eligible persons voting in the referendum and a majority of volume voted in the referendum.

**§ 1212.26 Research.**

“Research” means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of honey and honey products, including research relating to nutritional value, cost of production, new product development, testing the effectiveness of market development and promotion efforts. 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.

**§ 1212.27 Secretary.**

“Secretary” means the Secretary of Agriculture of the United States, or any other officer or employee of the Department to whom authority the Secretary delegated the authority to act on his or her behalf.

**§ 1212.28 Suspend.**

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

**§ 1212.29 State.**

“State” means any of the fifty States of the United States of America, the

District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

**§ 1212.30 Terminate.**

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

**§ 1212.31 United States.**

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

**§ 1212.32 United States Customs Service.**

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

**Honey Packers and Importers Board**

**§ 1212.40 Establishment and membership.**

The Honey Packers and Importers Board is established to administer the terms and provisions of this part. The Board shall have ten members, composed of three first handler representatives, two importer representatives, one importer-handler representative, three producer representatives, and one marketing cooperative representative. The importer-handler representative must import at least 75 percent of the honey or honey products they market in the United States and handle at least 250,000 pounds annually. In addition, the producer representatives must produce a minimum of 150,000 pounds of honey in the United States annually based on the best three-year average of the most recent five calendar years, as certified by producers. The Secretary will appoint members to the Board from nominees submitted in accordance with § 1212.42. The Secretary shall also appoint an alternate for each member.

**§ 1212.41 Term of office.**

With the exception of the initial Board, each Board member and alternate will serve a three-year term or until the Secretary selects his or her successor. No member or alternate may serve more than two consecutive terms, excluding any initial two-year term of office. The terms of the initial Board members shall be staggered for two-, three-, and four-year terms. For the initial Board, one producer, one first handler, one importer, and the representative of a national honey cooperative will serve a two-year term of office. One producer,

one first handler, and the importer-handler representative, will serve a three-year term of office. One producer, one first handler, and one importer will serve a four-year term of office. Determination of which of the initial members and their alternates shall serve two-year, three-year or four-year terms, shall be designated by the Secretary. Thereafter, each of these positions will carry a full three-year term. Members serving initial terms of two or four years will be eligible to serve a second term of three years. Each term of office will end on December 31, with new terms of office beginning on January 1. If this part becomes effective on a date such that the initial period is less than six months in duration, then the tolling of time for purposes of this subsection shall not begin until the beginning of the first 12-month fiscal period.

**§ 1212.42 Nominations and appointments.**

All nominations to the Board will be made as follows:

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

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

(c) All qualified national organizations representing producer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) National honey-marketing cooperative. The Secretary can certify that an entity qualifies as a national honey-marketing cooperative, as defined

in § 1212.42(d). Such an entity shall not be eligible for certification as a qualified national organization representing producer interests.

#### § 1212.43 Removal and vacancies.

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

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

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

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

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

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

#### § 1212.44 Procedure.

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

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

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

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

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

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

#### **§ 1212.45 Reimbursement and attendance.**

Board members and alternates, when acting as members, will serve without compensation but will be reimbursed for reasonable travel expenses, as approved by the Board, that they incur when performing Board business. The Board may request that alternates attend any meeting even if their respective members are expected to attend or actually attend the meeting.

#### **§ 1212.46 Powers.**

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

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

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

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

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

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

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

#### **§ 1212.47 Duties.**

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

(a) To meet and organize, and to select from among its members a chairperson

and such other officers as may be necessary; to select committees and subcommittees from its membership and other industry representatives; and to develop and recommend such rules, regulations, and by-laws to the Secretary for approval to conduct its business as it may deem advisable;

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **§ 1212.48 Reapportionment of Board membership.**

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

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

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

#### **Expenses and Assessments**

##### **§ 1212.50 Budget and expenses.**

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

revenue from assessments each fiscal period for production research and research relating to the production of honey.

Each such budget shall include:

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

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

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

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

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

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

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

(e) With approval of the Department, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Voluntary contributions shall be free from any encumbrance by the donor, and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Department for all expenses incurred by the Department in the implementation, administration, enforcement and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Board may not expend for administration, maintenance, and functioning of the Board in any calendar year an amount that exceeds 15 percent of the assessments and other income received by the Board for that calendar year. Reimbursements to the Department required under paragraph (g) of this section, are excluded from this limitation on spending.

(i) The Board may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, with the approval of the Secretary, for authorized activities.

#### **§ 1212.51 Financial statements.**

(a) The Board shall prepare and submit financial statements to the Department on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Department within 30 days after the end of the time period to which it applies.

(c) The Board shall submit annually to the Department an annual financial statement within 90 days after the end of the calendar year to which it applies.

#### **§ 1212.52 Assessments.**

(a) The Board will cover its expenses by levying in a manner prescribed by the Secretary an assessment on first handlers and importers.

(b) Each first handler shall pay an assessment to the Board at the rate of \$0.01 per pound of domestically produced honey or honey products the first handler handles. A producer shall pay the Board the assessment on all honey or honey products for which the producer is the first handler.

(c) Each first handler responsible for remitting assessments under paragraph (b) of this section shall remit the amounts due to the Board's office on a monthly basis no later than the fifteenth day of the month following the month in which the honey or honey products were marketed.

(d) Each importer shall pay an assessment to the Board at the rate of \$0.01 per pound of honey or honey products the importer imports into the United States. An importer shall pay the assessment to the Board through the United States Customs Service (Customs) when the honey or honey products being assessed enters the United States. If Customs does not collect an assessment from an importer,

the importer is responsible for paying the assessment to the Board.

(e) The import assessment recommended by the Board and approved by the Secretary shall be uniformly applied to imported honey or honey products that are identified as HTS heading numbers 0409.00.00 and 2106.90.9988 by the Harmonized Tariff Schedule of the United States.

(f) The Board may recommend to the Secretary an increase or decrease in the assessment as it deems appropriate by at least a two-thirds vote of members present at a meeting of the Board. The Board may not recommend an increase in the assessment of more than \$0.02 per pound of honey or honey products and may not increase the assessment by more than \$0.0025 in any single fiscal year.

(g) In situations of late payment:

(1) The Board shall impose a late payment charge on any first handler or importer who fails to remit to the Board the total amount for which the first handler or importer is liable on or before the payment due date the Board recommends. The amount of the late payment charge shall be prescribed by the Department.

(2) The Board shall require any first handler or importer subject to a late payment charge to pay interest on the unpaid assessments for which the first handler or importer is liable. The rate of interest shall be prescribed by the Department.

(3) First handlers or importers who fail to remit total assessments in a timely manner may also be subject to actions under federal debt collection procedures.

(h) Advance payment. The Board may accept advance payment of assessments from first handlers or importers that will be credited toward any amount for which the first handlers or importers may become liable. The Board does not have to pay interest on any advance payment.

(i) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments and invest them on behalf of the Board, and shall pay such assessments and any interest earned to the Board when it is formed.

#### **§ 1212.53 Exemption from assessment.**

(a) A first handler who handles less than 250,000 pounds of honey or honey products per calendar year or an importer who imports less than 250,000 pounds of honey or honey products per calendar year is exempt from paying assessments.

(b) A first handler who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, handles only products that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, shall be exempt from the payment of assessments. An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, shall be exempt from the payment of assessments.

(c) A first handler or importer desiring an exemption shall apply to the Board, on a form provided by the Board, for a certificate of exemption. A first handler shall certify that the first handler will handle less than 250,000 of honey and honey products for the calendar year for which the exemption is claimed. An importer shall certify that the importer will import less than 250,000 pounds of honey and honey products during the calendar year for which the exemption is claimed.

(d) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board will then issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. It is the responsibility of these persons to retain a copy of the certificate of exemption.

(e) Exempt importers shall be eligible for reimbursement of assessments collected by Customs. These importers shall apply to the Board for reimbursement of any assessment paid. No interest will be paid on the assessment collected by Customs. Requests for reimbursement shall be submitted to the Board within 90 days of the last day of the calendar year the honey or honey products were imported.

(f) If a person has been exempt from paying assessments for any calendar year under this section and no longer meets the requirements for an exemption, the person shall file a report with the Board in the form and manner prescribed by the Board and begin to pay the assessment on all honey or honey products handled or imported.

(g) Any person who desires an exemption from assessments for a subsequent calendar year shall reapply to the Board, on a form provided by the Board, for a certificate of exemption.

(h) The Board may recommend to the Secretary that honey and honey products exported from the United States be exempt from this subpart and recommend procedures for refunding assessments paid on exported honey and honey products and any necessary safeguards to prevent improper use of this exemption.

#### **§ 1212.54 Operating reserve.**

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: Provided that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Department, such reserve funds may be used to defray any expenses authorized under this part.

#### **§ 1212.55 Prohibition on use of funds.**

(a) The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(1) Any action that is a conflict of interest;

(2) Except as otherwise provided in paragraph (b) of this section, using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to the Order.

(3) A program, plan or project conducted pursuant to this subpart that includes false or misleading claims on behalf of honey or honey products.

(4) Any advertising, including promotion, research and information activities authorized that may be false or misleading or disparaging to another agricultural commodity.

(b) The prohibition in paragraph (a)(2) of this section shall not apply:

(1) To the development and recommendation of amendments to this subpart; or

(2) To the communication to appropriate government officials, in response to a request made by the officials, of information relating to the conduct, implementation, or results of promotion, research, consumer information, education, industry information, or producer information activities authorized under this subpart.

#### **Promotion, Research, and Information**

##### **§ 1212.60 Programs, plans and projects.**

(a) Scope of activities. The Board must develop and submit to the Secretary for approval plans and programs authorized by this section. The plans and programs may provide for:

(1) Establishing, issuing, and administering appropriate programs for promotion, research, and information including consumer and industry information, and advertising designed to strengthen the honey industry's position in the marketplace and to maintain, develop, and expand domestic and foreign markets for honey and honey products;

(2) Establishing and conducting research and development activities to encourage and expand the acquisition of knowledge about honey and honey products, their consumption and use, or to encourage, expand or improve the quality, marketing, and utilization of honey and honey products;

(3) Conducting activities that may lead to developing new markets or marketing strategies for honey and honey products;

(4) Conducting activities related to production issues or bee research activities; and

(5) Conducting activities designed to make the honey industry more efficient, to improve the quality of honey or to enhance the image of honey and honey products and the honey industry.

(b) No program, plan, or project shall be implemented prior to its approval by the Department. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) The Board must periodically evaluate each plan and program authorized under this part to ensure that it contributes to an effective and coordinated program of research, promotion and information. The Board must submit the evaluations to the Secretary. If the Board and the Secretary find that a plan or program does not further the purposes of the Act, then such plan or program should be terminated.

##### **§ 1212.61 Independent evaluation.**

The Board must authorize and fund not less than once every five years an independent evaluation of the effectiveness of this subpart and the plans and programs conducted by the Board under the Act. The Board must submit this independent evaluation to the Secretary and make the results available to the public.

##### **§ 1212.62 Patents, copyrights, inventions, product formulations, and publications.**

Except for a reasonable royalty paid by the Board to the inventor of a patented invention, any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government, as represented by the Board, and shall along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal,

budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Department. Upon termination of this Order, § 1212.83 shall apply to determine disposition of all such property.

### Reports, Books, and Records

#### § 1212.70 Reports.

(a) Each first handler or importer subject to this part must report to the Board, at the time and in the manner it prescribes, and subject to the approval of the Secretary, the information the Board deems necessary to perform its duties.

(b) First handlers must report:

(1) The total quantity of honey and honey products acquired during the reporting period;

(2) The total quantity of honey and honey products handled during the period;

(3) The quantity of honey processed for sale from the first handler's own production;

(4) The quantity of honey and honey products purchased from a first handler or importer responsible for paying the assessment due pursuant to this Order;

(5) The date that assessment payments were made on honey and honey products handled; and

(6) The first handler's tax identification number.

(c) Unless provided by Customs, importers must report:

(1) The total quantity of honey and honey products imported during the reporting period;

(2) A record of each lot of honey or honey products imported during such period, including the quantity, date, country of origin, and port of entry; and

(3) The importer of record's tax identification number.

(d) The Board may request any other information from first handlers and importers that it deems necessary to perform its duties under this subpart, subject to the approval of the Secretary.

(e) The Board, with the Secretary's approval, may request that persons claiming an exemption from assessments under § 1212.52(b) or (d) must provide it with any information it deems necessary about the exemption, including, without limitation, the disposition of exempted honey or honey products.

#### § 1212.71 Books and records.

Each first handler and importer, including those who are exempt under this subpart, must maintain any books and records necessary to carry out the provisions of this part, and any regulations issued under this part, including the books and records

necessary to verify any required reports. Books and records must be made available during normal business hours for inspection by the Board's or Secretary's employees or agents. A first handler or importer must maintain the books and records for two years beyond the fiscal period to which they apply.

#### § 1212.72 Confidential treatment.

All information obtained from books, records, or reports under the Act and this part shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, first handlers, or importers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected thereof, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this part, together with a statement of the particular provisions of this part violated by such person.

### Miscellaneous

#### § 1212.80 Right of the Secretary.

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

#### § 1212.81 Referenda.

(a) After the initial referendum, the Secretary shall conduct subsequent referenda;

(1) Every seven years, to determine whether first handlers and importers of honey or honey products favor the continuation, suspension, or termination of the Order. The Order shall continue if it is favored by a majority of first handlers and importers

voting in the referendum and a majority of volume voting in the referendum who, during a representative period determined by the Secretary, have been engaged in the handling or importation of honey or honey products;

(2) At the request of the Board established in this Order;

(3) At the request of ten (10) percent or more of the number of persons eligible to vote under the Order; or

(4) Whenever the Department deems that a referendum is necessary.

(b) *Approval of order.* Approval in a referendum shall be established by a majority of eligible persons voting in the referendum and a majority of volume voting in the referendum who are first handlers or importers during the representative period by those voting as established by the Secretary.

(c) *Manner of conducting referenda.* A referendum conducted under this section shall be conducted in the manner determined by the Secretary to be appropriate.

#### § 1212.82 Suspension or termination.

The Secretary shall suspend or terminate the operation of this part or subpart or any provision thereof, if the Secretary finds that this part or subpart or the provision obstructs or does not tend to effectuate the declared policy of the Act.

#### § 1212.83 Proceedings after termination.

(a) If this subpart terminates, the Board shall recommend to the Secretary up to five of its members to serve as trustees for the purpose of liquidating the Board's affairs. Such persons, upon designation by the Secretary, will become trustees of any funds and property the Board possesses or controls at that time and any existing claims it has, including, without limitation, claims for any unpaid or undelivered funds or property.

(b) The trustees will:

(1) Serve until discharged by the Secretary;

(2) Carry out the Board's obligations under any contracts or agreements entered into pursuant to the Order;

(3) Account from time to time for all receipts and disbursements and deliver all property on hand, together with all the Board's and trustees' books and records to any person the Secretary directs; and

(4) Execute at the Secretary's direction any assignments or other instruments necessary or appropriate to vest in any person full title and right to all of the funds, property, and claims owned by the Board or the trustees under this subpart.

(c) Any person to whom funds, property, or claims have been

transferred or delivered pursuant to the Order will be subject to the same obligations imposed upon Board and the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Department to be disposed of, to the extent practical, to one or more honey industry organizations in the interest of continuing honey promotion, research, and information programs.

**§ 1212.84 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, terminating or amending this subpart or any regulation issued under it will not:

(a) Affect or waive any right, duty, obligation, or liability that arose or may arise in connection with any provision of this part;

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the United States or any person with respect to any violation.

**§ 1212.85 Personal liability.**

No member, alternate member, or employee of the Board may be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as a member, alternate member, or employee, except for acts of dishonesty or willful misconduct.

**§ 1212.86 Separability.**

If any provision of this subpart is declared invalid or the applicability of it to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability of it to other persons or circumstances will not be affected.

**§ 1212.87 Amendments.**

Amendments to this Order may be proposed from time to time by the Board or any interested person affected by the provisions of the Act, including the Department.

**§ 1212.88 OMB control number.**

The control number assigned to the information collection requirements in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0505-0001, and OMB control number 0581-[NEW, to be assigned by OMB].

Dated: May 15, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 08-1282 Filed 5-16-08; 3:33 pm]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2007-0037; Directorate Identifier 2007-NE-41-AD; Amendment 39-15521; AD 2008-10-14]

**RIN 2120-AA64**

**Airworthiness Directives; Rolls-Royce Deutschland Ltd. & Co. KG. (RRD) TAY 650-15 Turbofan Engines**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Strip results from some of the engines listed in the applicability section of this directive revealed excessively corroded low pressure turbine disks stage 2 and stage 3. The corrosion is considered to be caused by the environment in which these engines are operated. Following a life assessment based on the strip findings it is concluded that inspections for corrosion attack are required. The action specified by this AD is intended to avoid a failure of a low pressure turbine disk stage 2 or stage 3 due to potential corrosion problems which could result in uncontained engine failure and damage to the airplane.

We are issuing this AD to detect corrosion that could cause stage 2 or stage 3 disk of the low pressure turbine to fail and result in an uncontained failure of the engine.

**DATES:** This AD becomes effective June 25, 2008. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 25, 2008.

**ADDRESSES:** The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

**FOR FURTHER INFORMATION CONTACT:** Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: [jason.yang@faa.gov](mailto:jason.yang@faa.gov); telephone (781) 238-7747; fax (781) 238-7199.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 2, 2008 (73 FR 75). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

Strip results from some of the engines listed in the applicability section of this directive revealed excessively corroded low pressure turbine disks stage 2 and stage 3. The corrosion is considered to be caused by the environment in which these engines are operated. Following a life assessment based on the strip findings it is concluded that inspections for corrosion attack are required.

**Comments**

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

**Editorial Change To Clarify the Actions and Compliance Section**

We added the revision date of September 1, 2006, to paragraph (e)(1) to clarify the requirements to that paragraph. Also, we added Tasks 72-52-23-200-000 and 72-52-24-200-000 to paragraph (e)(3) to clarify the requirements of that paragraph.

**Conclusion**

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about two engines installed on airplanes of U.S. registry. We also estimate that it would take about 1.0 work-hours per product to inspect the disk, and that the average labor rate is \$80 per work-hour. If corrosion is found, we estimate that it would take about 2 work-hours to replace the disk. Required parts would cost about \$40,000 per product. Based on these