

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 1245**

[Doc. No. AMS-FV-07-0091; FV-07-706-PR-1B]

RIN 0581-AC78

**U.S. Honey Producer Research, Promotion, and Consumer Information Order; Referendum Procedures****AGENCY:** Agricultural Marketing Service, Agriculture, USDA.**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The purpose of this proposed rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed U.S. Honey Producer Research, Promotion, and Consumer Information Order (Proposed U.S. Producer Order) is favored by persons to be covered by and assessed under this Order. The Proposed U.S. Producer Order will be implemented if it is approved by a majority of the eligible producers voting in the referendum who also represent a majority of the volume of U.S. honey produced. These procedures would also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The Proposed U.S. Producer Order is being published separately in this issue of the **Federal Register**. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act).

**DATES:** Comments must be received by September 14, 2009. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by September 14, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments can be made on the Internet at <http://www.regulations.gov> or to the Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, Room 0634-S, 1400 Independence Avenue, SW., Washington, DC 20250-0244; Fax (202) 205-2800. Comments should reference the docket number, title of action, date, and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or can be viewed at <http://www.regulations.gov>.

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address and to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Coy, Marketing Specialist, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, Room 0634-S, 1400 Independence Avenue, SW., Washington, DC 20250-0244; telephone 202-720-9915 or (888) 720-9917 (toll free) or *e-mail* [kimberly.coy@usda.gov](mailto:kimberly.coy@usda.gov).

**SUPPLEMENTARY INFORMATION:** A referendum will be conducted among eligible U.S. producers of honey to determine whether they favor issuance of the proposed U.S. Honey Producer Research, Promotion, and Consumer Information Order (Proposed U.S. Producer Order) [7 CFR part 1245]. The program will be implemented if it is approved by a majority of U.S. honey producers voting in the referendum who also represent a majority of the volume of U.S. honey produced. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) [7 U.S.C. 7411-7425]. The Order would cover the producers of U.S. honey of 100,000 pounds or more. The Proposed U.S. Producer Order is being published separately in this issue of the **Federal Register**.

**Executive Order 12866**

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 524 of the Act provides that the Act 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 Act, a person subject to an order may file a petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in

accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 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 USDA's final ruling.

**Initial Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601-612], the Department is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The 1996 Act, which authorizes the Department to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The 1996 Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the 1996 Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. In addition, 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 three years after assessments first begin under an order. The American Honey Producers Association (AHPA), the proponent of the Proposed U.S. Producer Order, has recommended that the Department conduct a referendum in which approval of an order would be based on a majority of U.S. producers of honey voting in the referendum who also represent a majority of the volume of U.S. honey produced. The Department proposes that a referendum be

conducted prior to the Proposed U.S. Producer Order going into effect.

This proposed rule would establish the procedures under which producers of U.S. honey may vote on whether they want a U.S. honey producer research, promotion, and consumer information program to be implemented. This proposal would add a new subpart which establishes procedures to conduct an initial referendum and future referenda. The proposed subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 317 producers of honey who would be subject to the program and eligible to vote in the first referendum. 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 \$7.0 million or less. Using these criteria, most producers would be considered small businesses.

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.

There is a current Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order (Packers and Importers Order) in effect (7 CFR Part 1212) that replaced the Original Honey Research, Promotion, and Consumer Information Order (Original Order) on May 15, 2008 [73 FR 29390]. Based on the assessment reports in connection with the Original Honey Research, Promotion, and Consumer Information Order and recorded by U.S. Customs and Border Protection, seventeen countries produced over 93 percent of the honey imported into the U.S. In 2005, five of these countries produced almost 79 percent of the total honey imported into the United States. These countries and their share of the imports are: China (28%), Argentina (21%),

Vietnam (13%), Canada (10%), and India (8%). Imports accounted for 69 percent of U.S. consumption in 2006, an increase of 18 percent, up from 51 percent since 2002. In 2006, 155 million pounds of honey were produced in the United States, 279.4 million pounds were imported and 7.6 million pounds were exported. At the initial rate of \$0.02 per pound, revenue for the Proposed U.S. Producer Order would be approximately \$1.9 million in a twelve month period.

This proposed rule provides the procedures under which U.S. honey producers may vote on whether they want the Proposed U.S. Producer Order to be implemented. In accordance with the provisions of the 1996 Act, subsequent referenda may be conducted, and it is anticipated that the proposed procedures would apply. There are approximately 317 producers of honey who would be eligible to vote in the first referendum. U.S. honey producers of less than 100,000 pounds of U.S. honey annually would be exempt from assessments and not eligible to vote in the referendum.

USDA will keep these U.S. honey producers informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if U.S. honey producers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the Proposed U.S. Producer program.

The information collection requirements contained in this proposed rule are designed to minimize the burden on U.S. honey producers. This rule provides for a ballot to be used by eligible U.S. honey producers to vote in the referendum. The estimated total cost of providing information by an estimated 317 U.S. producers would be \$317 or \$1.00 per U.S. producers.

USDA considered requiring eligible voters to vote in person at various USDA offices across the country. USDA also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot would be more cost effective and reliable. USDA will provide easy access to information for potential voters through a toll free telephone line.

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

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities.

#### **Paperwork Reduction Act**

In accordance with the OMB regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this proposed rule, was submitted to OMB for approval and would be approved under OMB number 0581-NEW.

*Title:* U.S. Honey Producers Research, Promotion, and Consumer Information Order.

*OMB Number:* 0581-NEW.

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

*Title:* New information collection for research and promotion programs.

*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 Act, to provide the respondents the type of service they request, and to administer the Order. The ballot is needed for the referendum that will be held to determine whether U.S. producers are in favor of the program. The information collected is used by USDA to determine whether a majority of the eligible U.S. producers voting in a referendum, who also represent a majority of the volume of U.S. honey and honey products, approve this program.

#### **Referendum Ballot**

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each U.S. honey producer.

*Respondents:* U.S. honey producers.

*Estimated Number of Respondents:* 317.

*Estimated Number of Responses per Respondent:* 1 every 7 years (0.14).

*Estimated Total Annual Burden on Respondents:* 11 hours.

The ballot will be added to the other information collections approved for use under OMB Number 0581-NEW.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of

the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the 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.

Comments should reference OMB No. 0581-NEW and the U.S. Honey Producer Research, Promotion, and Consumer Information Order, and should be sent to USDA in care of Sonia Jimenez at the address above and the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

All comments received will be available for public inspection during regular business hours at the same address and at <http://www.regulations.gov>. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will also become a matter of the public record.

The Agricultural Marketing Service (AMS) is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The estimated annual cost of providing the information by an estimated 317 U.S. honey producers would be \$317 or \$1.00 per producer.

A 60-day comment period is provided to allow interested persons to comment on this proposed information collection.

### 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 AHPA submitted the Proposed U.S. Producer Order on May 25, 2007, and modifications were made to the proposal to make it consistent with the 1996 Act. The proposal is being published for public comment in this issue of the **Federal Register**.

The Proposed U.S. Producer Order would provide for the development and financing of an effective and coordinated program of promotion, research, and consumer and industry information for honey and honey

products in the United States. The program would be funded by an assessment levied on U.S. honey producers at an initial rate of \$0.02 per pound. U.S. honey producers of less than 100,000 pounds of U.S. honey annually will be exempt from assessments. At the initial rate of \$0.02 per pound, revenue for the Proposed U.S. Producer Order would be approximately \$1.9 million in a twelve month period.

The assessments would be used to pay for promotion, research, and consumer and industry information; administration, maintenance, and functioning of the U.S. Honey Producer Board; and expenses incurred by the Department in implementing and administering the Order, including referendum costs.

Section 1206 of the 1996 Act requires that a referendum be conducted among U.S. honey producers of honey to determine whether they favor implementation of the Proposed U.S. Producer Order. That section also requires the Proposed U.S. Producer Order to be approved by a majority of U.S. honey producers of honey during the representative period.

This proposed rule establishes the procedures under which U.S. honey producers of honey may vote on whether they want the U.S. honey producer research, promotion, and consumer information program to be implemented. There are approximately 317 eligible voters.

This proposed rule would add a new subpart which would establish procedures to be used in this and future referenda. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

All written comments received in response to this rule by the date specified will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for the honey industry.

### List of Subjects in 7 CFR Part 1245

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

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

### PART 1245—U.S. HONEY PRODUCER RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

1. The authority citation for part 1245 continues to read as follows:

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

2. Subpart B of 7 CFR part 1245 (as proposed to be added in **Federal Register** document 2009-16401 published elsewhere in this issue) is proposed to be added to Title 7, Chapter XI of the Code of Federal Regulations to read as follows:

#### Subpart B—Referendum Procedures

Sec.

|          |                           |
|----------|---------------------------|
| 1245.100 | General.                  |
| 1245.101 | Definitions.              |
| 1245.102 | Voting.                   |
| 1245.103 | Instructions.             |
| 1245.104 | Subagents.                |
| 1245.105 | Ballots.                  |
| 1245.106 | Referendum report.        |
| 1245.107 | Confidential information. |
| 1245.108 | OMB control number.       |

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

#### Subpart B—Referendum Procedures

##### § 1245.100 General.

Referenda to determine whether eligible U.S. producers favor the issuance, continuance, amendment, suspension, or termination of the U.S. Honey Producer Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

##### § 1245.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to re-delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

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

(c) *Eligible producer* means any person who produces 100,000 pounds or more of honey in any State for sale in commerce and is subject to pay assessments to the Board on such U.S. honey produced during the representative period and who:

(1) Owns or shares in the ownership of honey bee colonies or beekeeping equipment resulting in the ownership of the U.S. honey produced;

(2) Rents honey bee colonies or beekeeping equipment resulting in the

ownership of all or a portion of the U.S. honey produced;

(3) Owns honey bee colonies or beekeeping equipment but does not manage them and, as compensation, obtains the ownership of a portion of the U.S. honey produced; or

(4) Is a party in a lessor-lessee relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey that share the risk of loss and receive a share of the U.S. honey produced. No other acquisition of legal title to honey shall be deemed to result in persons becoming eligible producers.

(d) *Honey* means the nectar and saccharine exudations of plants that are gathered, modified, and stored in the comb by honeybees, including comb honey.

(e) *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 percent honey by weight.

(f) *Order* means the U.S. Honey Producer Research, Promotion, and Consumer Information Order.

(g) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A spouse or marital partner who have title to, or leasehold interest in, honey bee colonies or beekeeping equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production, or handling for market and the authority to transfer title to the honey so produced, or handled.

(h) *Referendum agent* or *agent* means the individual or individuals designated by the Department to conduct the referendum.

(i) *Representative period* means the period designated by the Department.

(j) *United States* or *U.S.* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

#### § 1245.102 Voting.

(a) Each person who is an eligible U.S. producer and each person who is an eligible producer-packer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast one ballot in the referendum: However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce U.S. honey or honey products, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only that producer's share of the ownership of U.S. honey or honey products.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer may cast one ballot in the referendum on behalf of such entity. Any individual so voting in a referendum shall certify that they are an officer or employee of the eligible entity, or an administrator, executor, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, as instructed by the Department.

#### § 1245.103 Instructions.

(a) *Referenda*. The Order shall not become effective unless the Department determines that the Order is consistent with and will effectuate the purposes of the Act; and for initial and subsequent referenda the Order is favored by a majority of the eligible persons voting in the referendum who also represent a majority of the volume of U.S. honey produced, during a representative period determined by the Department, have been engaged in the production of honey and are subject to assessments under this Order and excluding those exempt from assessment under the Order.

(b) The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(1) Determine the period during which ballots may be cast.

(2) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the

person voting, or on whose behalf the vote is cast, is an eligible voter.

(3) Give reasonable public notice of the referendum:

(i) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(ii) By such other means as the agent may deem advisable.

(4) Mail to eligible U.S. producers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the Order. No person who claims to be eligible to vote shall be refused a ballot.

(5) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(6) Prepare a report on the referendum.

(7) Announce the results to the public.

#### § 1245.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

#### § 1245.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

#### § 1245.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

**§ 1245.107 Confidential information.**

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

**§ 1245.108 OMB control number.**

The control number assigned to the information collection requirement in this subpart 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, OMB control number 0581-0217, and OMB control

number 0581-[NEW, to be assigned by OMB].

Dated: June 30, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator, Agricultural Marketing Service.*

[FR Doc. E9-16405 Filed 7-8-09; 4:15 pm]

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