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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1212

[Document Number AMS–SC–18–0016]

Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order; Change in Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the National Honey Board (Board) importer-handler member and alternate to an importer member and alternate. The Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Order) is administered by the Board with oversight by the U.S. Department of Agriculture (USDA). This rule also updates the definition for the term Board to reflect current practices, and make clarifying and conforming changes to other provisions of the program.

DATES: *Effective Date:* March 6, 2019.

FOR FURTHER INFORMATION CONTACT: Patricia P. Petrella, Deputy Director, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244; telephone: (202) 260–9496; facsimile: (202) 205–2800; or electronic mail: Patricia.Petrella@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This final rule affecting 7 CFR part 1212 (hereinafter referred to as the “Order”) is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and

benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This final rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12988

In addition, this final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) 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 (7 U.S.C. 7418), a person subject to an order may file a written 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 request 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 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have 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 the entry of USDA’s final ruling.

Background

This final rule changes the importer-handler member and alternate to an importer member and alternate on the Board under the Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Order). The Order is administered by the Board with oversight by USDA. Under the Order, assessments are collected from first handlers and importers and used for research and promotion projects designed to maintain and expand the market for honey and honey products in the United States and abroad. This rule will change the importer-handler representatives to importer representatives and make clarifying and conforming changes to other provisions of the program. This action was unanimously recommended by the Board in October 2017 and will allow more importers to be eligible to serve on the Board.

Section 1212.46 of the Order provides authority for the Board to recommend amendments to the Order. Section 1212.40 of the Order provides that the Board have ten members—three first handlers, two importers, one importer-handler, three producers, and one marketing cooperative representative. Each member shall have an alternate. Currently, the eligible importer-handler member and alternate 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. With this amendment, the total number of Board representatives will remain at ten, but importer representatives will increase from two to three representatives and the importer-handler member will be removed. Handlers will continue to be represented with three members on the Board. A corresponding adjustment will be made to the alternate representatives for each member. This action increases

the pool of importer nominees eligible to serve on the Board and reflects the current distribution of the industry.

U.S. honey imports have dramatically increased from 104,984 metric tons in 2008 to 203,534 metric tons in 2017. In comparison, U.S. honey production has decreased. USDA's National Agricultural Statistics Service estimates U.S. honey production from producers with 5 or more colonies at 164 million pounds in 2008 and at 148 million pounds in 2017.¹ The changes to the Board will reflect the distribution of the production of honey and the quantity of the honey and honey products imported into the United States.

Nominations to the Board are made by qualified national organizations and these organizations were consulted before the Board's recommendation. No qualified national organizations were opposed to the recommendation.

The Board met on October 26, 2017, and unanimously recommended that the importer-handler member and alternate become an importer member and alternate, allowing more importers to be eligible to serve on the Board. Section 1212.40 of the Order is revised accordingly. Conforming changes will be made to remove references to the importer-handler representative by removing § 1212.12 and revising §§ 1212.22, 1212.41, and 1212.42(b).

The current importer-handler member and alternate were appointed to the Board for a term that began on January 1, 2018 and ends on December 31, 2020. The importer-handler member and alternate will remain in their positions until their term expires on December 31, 2020. The following term beginning on January 1, 2021, will be filled by an importer member and importer alternate.

Finally, this action will revise the term Board as defined in § 1212.2 from the 'Honey Packers and Importers Board' to the 'National Honey Board' to reflect current practices. The term as it appears in § 1212.40 and in the undesignated heading preceding § 1212.40 will also be revised to read 'National Honey Board.'

Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000, and small agricultural service firms (first handlers and importers) as those having annual receipts of no more than \$7.5 million.

The Board reported that there were about 785 importers and 40 first handlers of honey and honey products covered under the program during the 2017 fiscal period. Fourteen out of the 40 first handlers (35 percent) and 23 out of the 785 importers (3 percent) accounted for 91 and 90 percent of the assessments in their respective categories. Total assessments for 2017 were \$8.87 million, of which \$2.09 million (24 percent) were paid by first handlers and \$6.78 million (76 percent) were paid by importers. This data can be used to compute an estimate of average annual revenue from honey sales from each of these categories, which in turn helps to estimate the number of large and small first handlers and importers. As mentioned above, 14 first handlers account for 91 percent of the domestic assessments. Multiplying first handler assessments in 2017 of \$2,091,881 by 0.91 and then dividing by 14 yields an average annual assessment of \$135,972 for the first handlers in this category. Dividing this figure (\$135,972) by the assessment rate of 1.5 cents per pound (\$0.015) yields an average quantity per first handler of 9.065 million pounds. Multiplying 9.065 million pounds by the average 2017 U.S. domestic price of \$2.16 per pound² yields an average annual honey revenue per handler of \$19.58 million, which is well above the SBA threshold of \$7.5 million. It should be noted that this revenue estimate is based on the average price at the producer level, and the \$19.58 million is an estimate of the total value at which the average size handler acquired the honey from producers. Therefore, most of the 14 first handlers that pay 91 percent of the domestic assessments are likely to be large firms according to the SBA definition.

An equivalent computation can be made for the 23 importers who paid 90 percent of the \$6,778,147 in assessments in 2017. Of the 23 importers, the average assessment per importer was \$265,741. Dividing the average assessment per

importer by the assessment rate of \$0.015 per pound yields an average quantity per importer estimate of 17.716 million pounds.

For honey imports, the equivalent of the season average price for domestic honey is referred to as a "unit value." The unit value of \$1.23 per pound is computed by dividing annual imported honey value of \$550.16 million by average quantity of 448.72 million pounds.³ Multiplying the \$1.23 unit value by the average quantity of 17.716 million pounds yields average annual honey revenue per importer figure of \$21.790 million, almost three times the SBA threshold figure of \$7.5 million for a large firm. Therefore, the majority of the 23 importers that pay 90 percent of the assessments are large firms, according to the SBA definition.

Comparable computations can be made to determine the average 2017 honey revenue for the 26 first handlers and 762 importers that paid 9 and 10 percent, respectively, of the assessment in the first handler and importer categories. The first handler and importer average annual honey revenue figures are approximately \$1,043,000 and \$17,000, respectively, indicating that the vast majority are small businesses (in terms of honey sales), under the SBA large business threshold of \$7.5 million in annual sales.

Based on the foregoing, the majority of first handlers and importers may be classified as small entities.

This rule changes the importer-handler Board member and alternate, as specified in section 1212.40 of the Order, to an importer member and alternate. The Order currently requires one importer-handler representative on the Board who 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. The U.S. honey industry has experienced dramatic increases in imported honey and honey products, as domestic production has decreased. Thus, the Board unanimously recommended that the importer-handler representative become an importer representative. This will allow for a greater pool of importer nominees to be eligible to serve on the Board. Conforming changes are being made to remove § 1212.12 and revise §§ 1212.22, 1212.41, and 1212.42(b). Finally, this rule updates the term Board to reflect current practices (§ 1212.2, the heading preceding §§ 1212.40 and 1212.40).

¹ USDA, National Agricultural Statistics Service, Honey, March 14, 2018, p. 3, <http://usda.mannlib.cornell.edu/usda/current/Hone/Hone-03-14-2018.pdf>.

² USDA, NASS, Honey, March 14, 2018, p. 3, <http://usda.mannlib.cornell.edu/usda/current/Hone/Hone-03-14-2018.pdf>.

³ USDA, AMS, SCP, MND, National Honey Report, February 26, 2018, p. 10, <https://www.ams.usda.gov/mnreports/fvmhoney.pdf>.

Authority for this action is provided in § 1212.46(d) of the Order.

Relaxing the eligibility requirements for importer representatives on the Board is administrative in nature and would have no economic impact on entities covered under the program. This change will help increase the number of importers who would be eligible to serve on the Board. Eligible producers, first handlers, and importers interested in serving on the Board have to complete a background questionnaire. Those requirements are addressed later in this proposal in the section titled.

Reporting and Recordkeeping Requirements

Prior to arriving at this action, the Board consulted with the qualified national organizations that make the nominations to the Board. Alternatives that were considered included making no changes and adjusting the eligibility requirements. However, in considering the distribution of the production of honey and the quantity of honey and honey products imported into the United States, the Board concluded that revising the importer-handler representative to an importer representative would be an accurate reflection of the industry and would increase the pool of eligible importers.

Reporting and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are imposed by the part have been previously approved by OMB under OMB control number 0581-0093. Additionally, Board nominees (including producers) must submit a Background Information form (AD-755) to ensure they are qualified to serve on the Board. The time to complete that form is estimated at 30 minutes per response. The background form is approved under OMB control no. 0505-0001. This rule will not result in a change to the information collection and recordkeeping requirements previously approved and would impose no additional reporting requirements and recordkeeping burden on honey producers, first handlers, or importers.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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.

This action was discussed with the qualified national organizations. The Board met on October 26, 2017, and unanimously recommended changing the importer-handler representative to an importer representative. All of the Board's meetings are open to the public and interested persons are invited to participate and express their views.

A proposed rule concerning this action was published in the **Federal Register** on October 1, 2018 (83 FR 49314). A 30-day comment period ending on October 31, 2018, was provided to allow interested person to respond to the proposal. The proposed rule was included the Board's September newsletter. Notifications were sent to industry trade organizations and industry news publications. The proposal was also made available through the internet by USDA and the Office of the Federal Register. One comment was received, but it did not pertain to this proposal; therefore, no changes were made to the proposed rule.

List of Subjects in 7 CFR Part 1212

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

For the reasons set forth in the preamble, 7 CFR part 1212 is amended as follows:

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

- 1. The authority citation for 7 CFR part 1212 continues to read as follows:

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

- 2. Revise § 1212.2 to read as follows:

§ 1212.2 Board.

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

§ 1212.12 [Removed and Reserved]

- 3. Remove and reserve § 1212.12.
- 4. Revise § 1212.22 to read as follows:

§ 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 and alternate importer members of the Board under § 1212.42.

- 5. Revise the undesignated center heading preceding § 1212.40 to read as follows:

National Honey Board

- 6. Revise § 1212.40 to read as follows:

§ 1212.40 Establishment and membership.

The National Honey Board is established to administer the terms and provisions of this part. The Board shall have ten members, composed of three first handler representatives, three importer representatives, three producer representatives, and one marketing cooperative representative. In addition, each producer representative must produce a minimum of 50,000 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.

- 7. Revise § 1212.41 to read as follows:

§ 1212.41 Term of office.

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. Each term of office will end on December 31, with new terms of office beginning on January 1.

- 8. Revise § 1212.42(b) to read as follows:

§ 1212.42 Nominations and appointments.

* * * * *

(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 and the importer 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.

* * * * *

Dated: January 29, 2019.

Bruce Summers,
Administrator.

[FR Doc. 2019-00872 Filed 2-1-19; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 327 and 337

RIN 3064-AE89

Limited Exception for a Capped Amount of Reciprocal Deposits From Treatment as Brokered Deposits

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations that implement brokered deposits and interest rate restrictions to conform with recent changes to section 29 of the Federal Deposit Insurance Act made by section 202 of the Economic Growth, Regulatory Relief, and Consumer Protection Act related to reciprocal deposits, which took effect on May 24, 2018. The FDIC is also making conforming amendments to the FDIC's regulations governing deposit insurance assessments.

DATES: This rule will be effective March 6, 2019.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objective of the final rule is to implement section 202 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, codified in 12 U.S.C. 1831f, which took effect on May 24, 2018.¹ The main effect of the legislation and the final rule is to permit FDIC-insured financial institutions, under certain circumstances, to except certain amounts of reciprocal deposits from treatment as brokered deposits.

¹ Public Law 115-174, 132 Stat. 1296-1368 (2018).

II. Background

The Economic Growth, Regulatory Relief, and Consumer Protection Act (the Act) was enacted on May 24, 2018.² Section 202 of the Act amends section 29 of the Federal Deposit Insurance Act (FDI Act)³ to except a capped amount of reciprocal deposits from treatment as brokered deposits for certain insured depository institutions. In addition, section 202 ensures that the interest rate restrictions in section 29 remain applicable to *any* deposit, including reciprocal deposits, whether or not they meet the limited exception. Section 202 was effective immediately upon enactment.

As more fully discussed below, well-capitalized institutions are not restricted from accepting or soliciting brokered deposits and have no restrictions on the rates they pay on deposits. However, under section 29, less than well-capitalized institutions may generally not accept, renew, or roll-over brokered deposits and may not offer rates on any deposits that are significantly higher than the prevailing rates in the institution's normal market area. Section 29 defines the term "deposit broker" and provides a list of exclusions to that term. Funds obtained through a deposit broker are considered brokered deposits. Section 202 amends section 29 to provide that a capped amount of reciprocal deposits will not be considered funds obtained through a deposit broker for certain insured depository institutions, and thus such deposits will be non-brokered. Reciprocal deposits that do not meet the section 202 exception are brokered deposits under section 29.

A. Section 29 of the FDI Act

Under section 29 of the FDI Act, an insured depository institution that is less than well capitalized is restricted from accepting deposits by or through a deposit broker.⁴ The FDIC may, however, waive this restriction if the insured depository institution is adequately capitalized; the restriction cannot be waived if the institution is less than adequately capitalized.⁵ Section 29 also imposes restrictions on the deposit interest rates that an insured depository institution may offer if the institution is not well capitalized.⁶ These interest rate restrictions cannot be waived. Section 337.6 of the FDIC's Rules and Regulations implements

² Public Law 115-174, 132 Stat. 1296-1368 (2018).

³ See 12 U.S.C. 1831f.

⁴ 12 U.S.C. 1831f(a).

⁵ 12 U.S.C. 1831f(c).

⁶ See generally, 12 U.S.C. 1831f.

section 29 of the FDI Act.⁷ Through this regulation, the FDIC has largely tracked the statutory definition of "deposit broker" and its exceptions.

A "deposit broker," as defined by section 29 of the FDI Act, includes "any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties. . . ." Under the FDIC's regulations, a "brokered deposit" is thus defined as a deposit accepted through a "deposit broker."⁸ The definition of "deposit broker" is subject to nine statutory exceptions in section 29 and one regulatory exception.⁹

B. Reciprocal Deposits

The reciprocal deposit arrangement is based upon a network of banks that place funds at other participating banks in order for depositors to receive insurance coverage for the entire amount of their deposits.¹⁰ In these arrangements, institutions within the network are both sending and receiving identical amounts of deposits simultaneously. Because reciprocal arrangements can be complex, and involve numerous banks, they are often managed by a third-party network sponsor. As a result of this arrangement, the institutions themselves (along with the third-party network sponsors) are "in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions."¹¹ The involvement of deposit brokers within the reciprocal network means the deposits are brokered deposits.¹²

For assessment purposes, reciprocal deposits have been treated more favorably than other types of brokered deposits. In 2009, through rulemaking, the FDIC amended its risk-based assessment rate methodology for small institutions (generally, insured depository institutions with less than \$10 billion dollars in total assets).¹³ In that rulemaking, the FDIC added an "adjusted brokered deposit ratio" that

⁷ 12 U.S.C. 1831f(a).

⁸ 12 CFR 337.6(a)(2).

⁹ 12 U.S.C. 1831 f(g)(2), (i); 12 CFR 337.6(a)(5)(i)(I); see also, 57 FR 23933-01 (June 5, 1992).

¹⁰ See FDIC Advisory Opinion No. 03-03 (July 29, 2003).

¹¹ Excerpt of the definition of "deposit broker." 12 U.S.C. 1831f.

¹² See FDIC's 2011 Study on Core and Brokered Deposits, issued July 2011, Sections IV.E. and VIII.E.

¹³ 74 FR 9525 (Mar. 4, 2009).