

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Parts 1212 and 1240**

[Docket No. AMS-FV-06-0176; FV-03-704-PR-2A]

RIN 0581-AC37

**Establishment of Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order and Termination of the Honey Research, Promotion, and Consumer Information Order**

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

**ACTION:** Proposed rule and Referendum Order.

**SUMMARY:** This rule proposes a new industry-funded research, promotion, consumer education, and information order for honey and honey products under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act). The proposed Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Proposed Order) was submitted to the Department of Agriculture (Department) by the National Honey Packers and Dealers Association (Association). The Department is conducting an initial referendum to ascertain whether the persons to be covered by and assessed under the Proposed Order favor the Proposed Order prior to it going into effect. The Proposed Order would replace the existing Honey Research, Promotion, and Consumer Information Order (Current Order) for honey and honey products and the Current Order would be terminated. The Current Order is issued under the Honey Research, Promotion, and Consumer Information Act (Honey Act). In addition, USDA is announcing that a referendum will be conducted among eligible honey first handlers and importers to determine whether they favor the implementation of the Proposed Order. The Proposed Order would be implemented if it is approved by a majority of the eligible first handlers and importers voting in a referendum and by a majority of the volume of those voting in the referendum. A separate final rule on referendum procedures is being published in this issue of the **Federal Register**.

**DATES:** The voting period is April 2, 2008 through April 16, 2008. To be eligible to vote, importers and first handlers must have imported or handled 250,000 or more pounds of

honey or honey products during the representative period from January 1, 2007 through December 31, 2007. Ballots will be mailed to all known first handlers and importers of honey or honey products on or before April 2, 2008.

Ballots must be received by the referendum agents no later than the close business (Eastern time) on April 16, 2008, to be counted.

**ADDRESSES:** Copies of the Order may be obtained from: Referendum Agent, Research and Promotion Branch (RPB), Fruit and Vegetable Programs (FVP), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 0632-S, 1400 Independence Avenue, SW., Washington, DC 20250-0244; Fax (202) 205-2800; Toll Free (888) 720-917 or at [www.regulations.gov](http://www.regulations.gov).

**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.

Pursuant to the 1996 Act, it is hereby directed that a referendum be conducted to determine whether eligible first handlers and importers of honey or honey products favor issuance of the Proposed Order. The Proposed Order is authorized under the 1996 Act.

The representative period for establishing voter eligibility for the referendum shall be the period from January 1, 2007, through December 31, 2007. First handlers and importers who have handled more than 250,000 pounds of honey or honey products, respectively, during the period from January 1, 2007, through December 31, 2007, are eligible to vote. The referendum shall be conducted by mail ballot from April 2, 2008 through April 16, 2008. Ballots must be received by the referendum agent no later than April 16, 2008, to be counted.

Section 518 of the 1996 Act provides to the Department the authority to conduct a referendum prior to the Order's effective date. The Order shall become effective only if it is determined that the Order has been approved by a

majority of those eligible persons voting for approval who also represent a majority of the volume of honey or honey products.

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

A proposed rule with the Proposed Order was published in the **Federal Register** on June 4, 2007 [72 FR 30924], with a 60-day comment period which closed on August 3, 2007.

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 both 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 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 and the Honey Act provide 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 whether a proposal for an order is consistent with and will effectuate the purpose of the 1996 Act, the Secretary may consider the existence of other federal research and

promotion programs issued under other laws. Taking into account the duplicative nature of the Proposed Order with the Current Order, the Department proposed that the Current Order be terminated.

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.

### Background

While both the Current and the Proposed Order have the same goal in terms of making positive strides for the honey industry, some of the main provisions within each order vary significantly between the two orders. Below is a discussion of some of the differences between the Current Order and the Proposed Order submitted by the Association. This comparison is not exhaustive, but it is intended to allow interested persons a way to distinguish between the two orders.

### Current Order: Honey Research, Promotion, and Consumer Information Order (Part 1240)

The Current Order, authorized by the Honey Act [7 U.S.C. 4601–4613], became effective on July 21, 1986, after honey producers and importers voted in favor of the Order. A 12-member board consisting of seven producers, two handlers, two importers, one officer of a marketing cooperative, and their alternates, administers the program. Under the Honey Act, at least 50 percent of the members of the Board must be honey producers. The Act also provides for the establishment of a National Honey Nominations Committee consisting of state members for nominating producer members to the Board. The State members are nominated by state beekeeper associations. Nominations for handler and importer members are made by qualified national organizations representing handler and importer interests, respectively. The national honey marketing cooperative representative is nominated by a qualified national honey marketing cooperative. Board reconstitution is every five years, subject to certain statutory considerations and restrictions.

Under the Current Order, assessments are collected on honey and honey products produced in or imported into the 50 States, Puerto Rico, and the

District of Columbia. The funds are collected from producers and importers and are used by the National Honey Board for market research and development, advertising and promotion of honey and honey products, and consumer information. This is done under the oversight of AMS. The current assessment rate is \$0.01 per pound. First handlers are responsible for collection of producer assessments and payment to the National Honey Board. The U.S. Customs Service collects the importer assessments.

Producers and importers marketing less than 6,000 pounds of honey per year are exempt from paying assessments. In addition, producers who operate under an approved National Organic Program (NOP) (7 CFR part 205) system plan, produce only products eligible to be labeled as 100 percent organic under the NOP, and are not a split operation, are exempt from the paying assessments. Similarly, importers who import only products eligible to be labeled as 100 percent organic under the NOP, and are not a split operation, are exempt from paying assessments.

Under the Current Order, approximately 2,700 entities are assessed and approximately \$3.6 million is collected annually.

Under the Current Order, handlers, importers, producers, and producer-packers are required to report certain specified information to the Board. Persons who have an exemption from assessments also must report to the Board information.

The Honey Act provides for a number of permissive terms that may be included in an order. For example, the Honey Act provides authority to establish minimum purity standards for honey and honey products that are designed to maintain a positive and wholesome marketing image for honey and honey products. An inspection and monitoring system and a voluntary quality assurance program is authorized in connection with the minimum purity standards. Only a voluntary quality assurance program has been approved by referendum and therefore appears in the Current Order.

The Honey Act requires a referendum to establish an order as well as to authorize a number of order provisions, including handler representation on the Board, reconstitution of the Board, an alternative assessment rate as provided by statute on honey producers, producer-packers, handlers and importers, and an inspection and monitoring system of a voluntary quality assurance program. Approval is

by a majority vote by number and volume for producers, importers and when applicable, handlers.

### Proposed Order: Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Part 1212)

This rule proposes the implementation of a Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Proposed Order). The Department received the proposal for a new order from the National Honey Packers and Dealers Association (Association).

The Proposed Order is authorized under the 1996 Act, instead of the Honey Act, which provides the statutory authority for the Current Order. The 1996 Act varies from the Honey Act in several ways.

The 1996 Act authorizes the Department, under a generic authority, to establish agricultural commodity research and promotion orders, which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. The Proposed Order, similar to the Current Order, would provide for the continued development and financing of a coordinated program of research, promotion, and information for honey and honey products.

The 1996 Act provides for a number of optional provisions that allow the tailoring of orders to the needs of different commodity groups. Section 516 of the 1996 Act contains permissive terms that may be included in the orders. For example, § 516 authorizes an order to provide for exemption of *de minimis* quantities 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 covered by the order in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports.

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 to be collected under an order. An order also may provide for its approval in a referendum based upon different voting patterns. In accordance with § 518(e) of the 1996

Act, the results of the referendum must be determined in one of three ways: (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.

Section 518 provides for the Department to: (1) Conduct an initial referendum, preceding a proposed order's effective date, among persons who would pay assessments under the proposed order; or (2) implement a proposed order, pending the conduct of a referendum, among persons subject to assessments, within three years after assessments first begin.

For the Proposed Order, the Department is recommending a referendum be conducted, preceding the Proposed Order's effective date, to ascertain whether the persons to be covered and assessed favor the Proposed Order going into effect. Implementation of the Proposed Order would require the approval of a majority of the first handlers and importers voting in the referendum, which also represent a majority of the volume of honey and honey products handled and imported during the representative period by those voting in the referendum. Specific procedures to be followed in such referendum are published separately in this issue of the **Federal Register**.

In addition, § 518 requires the Department to conduct subsequent referenda: (1) Not later than seven years after assessments first begin under the proposed order; or (2) at the request of the proposed board established under the proposed order; or (3) at the request of ten percent or more of the number of persons eligible to vote. In addition to these criteria, the 1996 Act provides that the Department may conduct a referendum at any time to determine whether persons eligible to vote favor the continuation, suspension, or termination of an order or a provision of an order. Expenses incurred by the Department in implementing and administering the proposed order, including referenda costs, would be paid from assessments.

#### Order Assessments

A major difference between the Current and Proposed Orders is that the Proposed Order provides for assessments to be paid by first handlers and importers of honey or honey products instead of producers and importers of such products. The number of entities assessed under the Proposed Order would be around 75, as compared

to the 2,700 presently under the Current Order. The funds generated through the mandatory assessments on domestically handled and imported honey or honey products would be used, as it is under the Current Order, to pay for promotion, research, and consumer and industry information as well as the administration, maintenance, and functioning of the Board.

Under the Proposed 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 Proposed Order would provide that each first handler pay an assessment to the proposed Board at the rate of \$0.01 per pound of domestically produced honey or honey products that the handler handles. Under the Current Order, producers must pay an assessment rate of \$0.01 per pound of honey produced. The Proposed 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 Proposed Order would define "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 the United States 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 Proposed Order treats importers in the same manner as they are treated under the Current Order in terms of the assessment rate and collection of assessments: 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 enter 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 Proposed 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 Proposed Order.

Under the Proposed 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 paying assessments under the Proposed 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 Proposed Order allows the Board to recommend to the Secretary for approval 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 may not increase the assessment 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 new Order did not elect to include it.

As the Proposed Order establishes that first handlers and importers will be

responsible for paying assessments, the 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. This is different than the Current Order in which reporting and record maintenance requirements are broader.

First handlers would 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 would recommend to the Department specific reporting periods and dates when such reports are due to the Board.

Unless provided by Customs, importers would 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 Proposed 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 Proposed Order, would be required to maintain any books and records necessary to carry out the provisions of the Proposed 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.

Both the Current and Proposed Order provide 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 would 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 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 Order and a statement of the particular provisions of the Order violated by the person would be allowed.

It is anticipated that 95 percent of the assessment dollars presently collected under the Current Order would be collected under the Proposed Order. This is because the Proposed Order would exempt first handlers handling and importers importing less than 250,000 pounds of honey or honey products per year. In contrast, under the Current Order, about 95 percent of current assessment dollars are collected from approximately 2,700 producers and importers. Producers and importers who handle less than 6,000 pounds of honey or honey products are exempt from the assessment under the Current Order. It is estimated that revenue for the Proposed 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.

It is also believed that the assessment of only first handlers and importers rather than producers and importers would reduce program administrative expenses as fewer entities would be paying assessments and filing reports.

#### **Establishment of the Honey Packers and Importers Board**

Section 515 of the 1996 Act provides for the establishment of a Board consisting of producers, first handlers, and others in the marketing chain, as appropriate. The Department would appoint members to the Board from nominees submitted in accordance with a Proposed Order. The Proposed Order would provide for the establishment of a Honey Packers and Importers Board to administer the Proposed Order under AMS oversight. The Association has proposed that the Board be composed of 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.

The Current Board consists of 12 members; seven producers, two handlers, two importers, one officer of a marketing cooperative, and their alternates.

On the Proposed Board, 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, as opposed to the Current Order in which a term of office begins on April 1.

First handlers, producers, and a national honey marketing cooperative representative would represent those entities in the United States. Board members from each of these groups would be nominated by national organizations representing each of them respectively. The United States would be 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. 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 would be nominated by national organizations representing importers. Such importers and the importer-handler would 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. The importer-handler member of the Board would be required to 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. All qualified national organizations representing first handlers, producers, importers and honey-marketing cooperatives would 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. To become a qualified national organization representing first handlers, importers, or producers under the Proposed Order, each such organization would be required to meet the following criteria: (1) The majority of its voting membership must consist of first

handlers, importers or producers of honey, respectively; (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. Any organization representing importers must represent at least a majority of the volume of honey or honey products imported into the United States.

To be eligible as a qualified national honey-marketing organization, the Department must certify that an entity qualifies as a cooperative, as defined in proposed section 1212.42(d). Such 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 nomination process in the Proposed Order varies from that in the Current Order. Under the Current Order, the National Honey Nominations Committee (Committee), consisting of individuals nominated by state beekeeper associations and appointed by the Secretary, is the entity that nominates members and alternates for the Board and submits such nominations to the Secretary for approval. The Committee picks producer members from seven regions established based on the production of honey. The Committee picks handler, importer, and cooperative members based on recommendations from qualified national organizations representing each of these groups' individual interests.

Just as in the Current Order, the Proposed 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 distinction 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 Proposed 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 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.

Under the Current Order, every five years the Board reviews the geographical distribution of domestically produced honey and the quantity of honey imported. The Board then makes recommendations based on the five-year average annual assessments excluding the two years containing the highest and lowest disparity between the proportion of assessments owed from the imported and domestic honey and honey products.

Just as under the Current Order, Board members could serve terms of three years and be able to serve a maximum of two consecutive terms under the Proposed 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 to 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.

Whereas under the Current Order, a quorum is met if there are a majority of

members and at least 50% are producers, under the Proposed 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 Proposed Order, there is a 2/3 vote requirement for recommendations of a change in assessment.

#### Other Order Provisions

In addition to differences in the entities assessed and the makeup of the Board, there are other comparative changes between the Proposed Order and the Current Order.

There are number of terms not used in the Current Order that are part of the Proposed Order, including "first handler" and "importer-handler representative." Also, the definition of "honey products" was expanded from the Current Order to state that such a product shall be considered to have honey as a principal ingredient if the product contains at least 50% honey by weight.

The Proposed Order provides that 5% of the Board's anticipated revenue must be set aside for production research, while the Current Order states generally that funding for such research shall be part of the budget.

The provisions regarding referendum procedures in the Proposed Order provide for a referendum every seven years. In the Current Order, a referendum occurs every five years.

The Department modified the Association's proposal to make it consistent with the 1996 Act and to provide clarity, consistency, and correctness with respect to word usage and terminology. The Department also changed the proposal to make it consistent with other similar national research and promotion programs. Some of the changes made by the Department to the Association's proposal were: (1) To remove the term "handler" and adopt "first handler" as the term to be used throughout the Proposed Order to be consistent with the 1996 Act; (2) to add criteria under nominations if a member or alternate is no longer affiliated with the organization he or she was nominated to represent; (3) to specify the initial terms of office for the Board to stagger the terms for future years; (4) to remove any references to the Current Board or Order; (5) to describe in more detail the powers and duties of the Board; (6) to add a new section describing reports that need to be provided by the Board on its financial position; (7) to add a section on independent evaluation of the effectiveness of any plan or program conducted by the Board; (8) to add a

section on patents, copyrights, inventions, product formulation and publication to specify that these would become the property of the U.S. government; (9) to add authority to collect first handler and importer tax identification numbers; (10) to revise referendum requirements; (11) to add a section on amendments to the Proposed Order; (12) to add a section to exempt from assessments handlers/importers who operate under an approved National Organic Program; (13) to delete references to a standards of identity program or a testing program for honey as these programs are not authorized under the 1996 Act; and (14) to clarify the membership on the Board.

While the proposal set forth below has not received the approval of the Department, it is determined that the Proposed Order is consistent with and will effectuate the purposes of the 1996 Act.

#### Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS 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 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 Association submitted this Proposed 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 Proposed Order with the Current Order, the Department is proposing that the Current Order be terminated. It is USDA's intention to have an operational program in effect under either the Current or Proposed Order.

The Proposed Order is authorized under Commodity Promotion, Research,

Information Act of 1996, while the Current Order is authorized under the Honey Research, Promotion, and Consumer Information Act. A major difference between the Current Order and the Proposed Order is that the Proposed Order provides for assessments to be paid by first handlers and importers of honey or honey products rather than producers and importers.

Administrative expenses under the Proposed Order should be reduced because the number of entities to be assessed under the Proposed Order would also be reduced. Approximately 2,700 entities are assessed under the Current Order, while only about 75 entities would be assessed under the Proposed Order. Administrative costs would be reduced with fewer entities paying assessments and filing reports, and the assessment collection process would be simplified.

First handlers, importers, and producers would have the opportunity to serve on the proposed 10 member Board. Each member would have an alternate. The Board would 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 would appoint members to the Board from nominees submitted in accordance with the Proposed Order. Twelve members serve on the Current Board.

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 will be conducted prior to putting this Proposed Order in effect. A referendum order is published herein. The Proposed Order also provides for approval in a referendum to be based upon: (1) Approval by a majority of those persons voting; and (2) persons voting for approval that represent a majority of the volume of honey and honey products of those voting in the referendum. 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 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 would pay

assessments under the Proposed Order. Under the Current Order, approximately 2,000 producers and 659 importers pay assessments. Under the Current Order, entities in the Board member nomination process include qualified national organizations representing handler and importer interests, a national honey market cooperative and state beekeeper associations. The Current Honey Board consists of 12 members; seven producers, two handlers, two importers, and one marketing cooperative member. Under the Proposed Order entities in the Board member nomination process would include, qualified national organizations representing first handlers, importers, producers, and cooperative interests. The Proposed Board would consist of 10 members; three first handlers, two importers, one importer-handler, three producers, and one marketing cooperative member.

The Proposed Order also provides for first handlers and importers to file reports to the Board. In addition, the Proposed Order requires that qualified national organizations and nominated producers provide information for the nomination and appointment process to the Proposed Board. While the Proposed Order would impose certain recordkeeping requirements on first handlers, importers, and any producers who seek nomination and appointment to the Board, information required under the Proposed Order could be compiled from records currently maintained and would involve existing clerical or accounting skills. The forms require the minimum information necessary to effectively carry out the requirements of the Proposed 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 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. In contrast, under the Current Order, 2,700 respondents need a total of 7,776

hours for reporting and recordkeeping for a total cost of \$129,459.

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 both the Current and the Proposed Order, most producers, first handlers, cooperative organizations and other nominating organizations would be considered small businesses, while most importers would not.

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. Assessment revenue collected from importers of honey or honey products for 2006 under the Current Order were approximately \$2.3 million.

At the initial rate, revenue for the Proposed Order would be approximately \$3 million. This amount is comparable to assessments collected under the Current Order. 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.

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 Proposed Order.

Associations and related industry media would receive news releases and other information regarding the implementation of the Proposed Order, termination of the Current Order, and the referendum process. Furthermore, all information would be available electronically.

The Board could develop guidelines for compliance with the Proposed Order. The Board could recommend changes in the assessment rate, programs, plans, projects, budgets, and any rules and regulations 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. In tailoring the program to industry needs, a decision also must be made about the termination or retention of the Current Order.

Similar to the Current Order, the Proposed 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 Proposed Order would require first handlers of honey or honey products, instead of honey producers, to pay assessments to the Board that administers the program. While assessments would impose some additional costs on first handlers, the reporting requirements are minimal because handlers under the Current Order already report to the Honey 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 Proposed Order. Under the Proposed Order importers would 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 Association has 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 Proposed 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 Proposed 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 Proposed Order includes provisions for domestic market expansion and improvement, reserve funds, and a referendum to be conducted prior to implementation of the Proposed Order. Approval would be based upon a majority of those persons voting for approval who also represent a majority of the volume of the honey and honey products of those voting in the referendum. Termination of the Current Order also is proposed.

If the Current Order is terminated and the Proposed Order implemented, there would be a decrease in the reporting and recordkeeping burden cost from \$129,459 under the Current Order to \$11,550 under the Proposed Order. The reduced cost is due to a reduction in the total of individuals required to report. If the Current Order is not terminated, it would duplicate some of the provisions proposed under the Proposed Order.

With the exception of the Current Order, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

We received comments as a result of the publication of the initial Regulatory Flexibility Analysis (RFA). Five comments were received raising concern over small entity representation on the Board, and a commenter



questioned the RFA in this regard. These comments are discussed in the comments section of this proposal.

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS announces its intention to request an approval of a new information collection for the Proposed Honey Program.

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

Under the Proposed 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 Proposed 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 Proposed 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 proposed forms would require the minimum information necessary to effectively carry out the requirements of the Proposed 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 would 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.

If the Current Order is terminated and the Proposed Order implemented, there would be a decrease in the reporting and recordkeeping burden cost from \$129,459 under the Current Order to \$11,550 under the Proposed Order. The reduced cost is due to a reduction in the total of individuals required to report from 2,700 under the Current Order to 118 under the Proposed Order.

Information collection requirements that are included in this proposal 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 WOULD 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 Proposed Order and the Department's oversight of the Proposed Order, including whether the information would have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed 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.

#### Comments

A 60-day comment period was provided to allow interested persons to respond to this proposal. Seventy-six comments were received on the Proposed Order by the August 3, 2007,

deadline. Comments were received from honey producers, handlers, importers, industry associations, state beekeepers associations, a honey co-op, and other interested parties. Comments received were varied in terms of support for the Proposed Order and the benefits of it or opposition, representation on the Proposed Order, transition between the Current Board and the Proposed Board, voting and termination of the Current Order, extension of the comment period, suggested modifications, impact if the rule on small entities, and other miscellaneous comments.

Twenty-one commenters supported the Proposed Order and stated that the Current Order has been an invaluable asset to the industry but that due to changes in support it may be voted out in the next referendum. The commenters also mentioned that the Current Order was approved in the last two referendums because the importers were assured that a Proposed Order would be implemented in the near future. The commenters also stated that a board composed of handlers and importers is the only way to ensure the long-term survival of the industry.

Three commenters that supported the Proposed Order, stated that with new challenges such as food safety and international market issues, the industry needs the Proposed Order more than ever to continue activities in these areas. Four supportive commenters stated that the industry wants to continue a true marketing and promotion board focusing on the sale of honey.

Five supportive commenters stated that importers and handlers do not want to continue to take part in the disagreements between the producer associations and that implementing this Proposed Order would diminish the conflict because producers would not have to pay into the Proposed Program.

Three commenters that supported the Proposed Order stated that by transferring the financial burden of paying assessments to the handlers, the companies closest to the consumer, they are able to participate in the funding of the programs that most directly benefit their businesses. One supportive commenter stated that it would be beneficial to have handlers assessed and occupy seats on the board as this is demonstrated by handler's involvement in the Current Program.

Twenty-two commenters stated that the new program provides for improved cost efficiencies and easier administration. For example, by decreasing the number of assessment payers, the administrative cost will decrease, according to the commenters. Also, a simplification of the nomination

process would save on travel costs. Commenters stated that the Proposed Order will have the same funds as the Current Order but the assessment payers will go from 4,000 currently to 100 under the Proposed Order.

Nine commenters that supported the Proposed Order stated that approximately 70 percent of the assessments paid under the Current Order are paid by importers and that the importers carried the vote in the last two referendums in order to maintain the Current Order. Four commenters also stated their support for the increased importer representation on the Proposed Board based on their belief that honey production is labor intensive, and that domestic production will decrease and imports will increase.

Eight commenters stated that the Proposed Order will be a true honey board with participation from all segments of the industry. Two commenters pointed out that under the Current Order, producers pay around 30 percent of the assessments but represent 58 percent of the seats on the Current Board. The commenters further stated that under the Proposed Order, 30 percent of the Board would be producers without having to pay assessments.

Three commenters were in favor of the Proposed Order but did not provide any further information.

Eight commenters stated that the Current Order worked well and did not believe a new order was necessary, and seven of those eight commenters suggested streamlining the Current Order instead of developing a new order. The proposal for a new program was submitted by an association that represents industry participants and with that proposal, the Department proposed termination of the Current Order. Because the Department has determined that the proposal is consistent with and will effectuate the purposes of the 1996 Act, it has initiated rulemaking to consider the Proposed Order. Further, the proponents of the Proposed Order have indicated that the intention is to continue the programs implemented under the Current Order in the Proposed Order, if approved. In addition, a referendum will be conducted to determine if this Proposed Order has the industry's support.

One commenter stated that the Proposed Order would result in less scrutiny of fair labeling, less promotion, reduced resources for research, restricted fair trade, and reduced food safety for consumers. One commenter stated that under the Proposed Order, there would be less money for bee research. The Proposed Order, as the

Current Order, authorizes programs of promotion, research, and information. Under the Proposed Order, the intent is to continue the same level of programs. In addition, as two commenters in support of the Proposed Order stated, five percent of the total assessments collected under the Proposed Order would be earmarked for research. According to the commenters, this would benefit the industry as a whole.

Thirteen commenters stated that representation on the Proposed Board minimizes producer representation and that it will result in producers losing their influence on setting policy and direction on the honey industry unless beekeepers of all sizes are represented. Five commenters stated that the requirement of a producer to produce over 150,000 pounds of honey to be eligible to serve would eliminate many producers from serving on the Proposed Board. The commenters raised concerns over small producer representation on the Board, and a commenter questioned the RFA in this regard. The number of producer members under the Proposed Order (three), is in fact less than the number under the Current Order (seven). The Proposed Board represents a cross section of the entire honey industry. The Board includes three first handler representatives, two importer representatives, one importer-handler representative, three producer representatives, and one marketing cooperative representative. However, under the Proposed Order, only handlers and importers will pay assessments to the Proposed Board, and producers will not. The Proposed Order goal is to maintain and expand markets for honey and honey products. Finally, Small producers, as well as the entire honey industry, will benefit from the Proposed Order. Accordingly, the Department believes that the producer representation as proposed is appropriate.

Four commenters stated their concern for filling handler and importer positions on the Proposed Board as there have been challenges in the past with finding handlers and importers willing to serve on the Current Board. There are approximately 45 handlers and 30 importers that would be covered under the Proposed Order. The Proposed Order requires that three handlers and two importers be appointed to the Proposed Board. The Department believes that there is a reasonable number of individuals that would be covered under the Proposed Order from which nominees for appointments to Board positions may be obtained.

Three commenters stated that allowing the Proposed Order to take over all the promotional materials of the Current Order would put honey producers at a disadvantage. Three commenters stated that the Proposed Order would support more importation of honey and not support the American beekeepers and domestic honey production, unlike the Current Order which they believe promotes honey generically and not one side over the other. The 1996 Act, under which the Proposed Order is authorized, like the Honey Act, requires that all promotions be generic in nature. Accordingly, the Proposed Order would promote honey and honey products generically.

Two commenters stated their concern that the definition of, and ability of consumers to purchase, pure honey will be lost if the Proposed Order and Board are implemented. Another commenter stated that eliminating the Current Program and starting a new program would create a gap related to the purity of honey that would be detrimental to the industry. Under the Current Order, the board is authorized to develop and carry out a voluntary quality assurance program concerning purity standards for honey and honey products. However, there is no authority for such a program under the 1996 Act.

One commenter stated that the assessment rate of \$0.01 per pound will actually be paid by the producers anyway as packers will pass it on to the producers. The assessment will be imposed on first handlers and importers who would pay assessments under the Proposed Order. Business decisions on how to manage assessments, including whether to pass back the cost of assessments to producers, are made by handlers and importers based on their respective business practices and are not within the scope of this rule.

Three commenters expressed appreciation for the Current Order's staff work, and the research and market development programs conducted under it. Two commenters stated that the Current Order is doing a great job at honey promotion and consumer education and that it should stay the same.

Four commenters stated their concern that there would not be a seamless transition between the Current Order and the Proposed Order, which would leave the honey industry vulnerable without a program for four to six months. Five commenters raised concerns about the future of the Current Order, the staff, the funds available, and assets that would be lost if the Current Order is terminated, or what would happen if a crisis arises during the

transition between the Current Order and the Proposed Order.

It is the Department's intention to make the transition between the Current Order and the Proposed Order, if approved in referendum, as smooth as possible. Section 1240.63 of the Current Order states that upon termination of the Order, the current board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the board. Those individuals, upon designation by the Secretary, would become trustees of all funds and property of the board. It is expected that the trustees of the Current Order would continue operations until the Proposed Order is in place, making the transition as seamless as possible.

Seven commenters who supported the Proposed Order stated that it is very important to have a quick and smooth transition from the Current Order to the Proposed Order in order to maintain the experienced staff, assets of the board, and existing programs. The same type of programs can continue under the Proposed Order. However, Current Order assets cannot be transferred over to the Proposed Order Program. Staff decisions concerning the Proposed Program will be made by the Proposed Order's Board. One commenter requested that the Current Board collect all the necessary domestic and importing statistical data that would be needed by the Proposed Board to help ensure a smoother transition.

Seven commenters also stated that all major honey associations support the transition to the Proposed Order.

One commenter supported the Proposed Order if the assets and programs of the Current Order are transferred to the Proposed Order. The commenter was also in favor of a U.S. honey producer program. As stated previously, the same types of programs can continue under the Proposed Order, however, Current Order assets cannot be transferred to the Proposed Order Program. It is the trustee's task to dispose of funds and assets of the Current Board in accordance with the Act and the Order.

One commenter proposed to: Redesign the nominations committee, assess producers \$0.02 per pound, eliminate importers assessments under the Current Order and create a U.S. honey board. The proposed rule published in the **Federal Register** did not request comments on changes to the Current Order. However, the Department is considering a proposed program for U.S. honey that would address the concerns in this comment.

One commenter requested that if the Board is to request a \$0.01 per pound assessment, then co-op members should get a rebate. The 1996 Act provides authority for credits for farmer cooperatives branded activities. Under the Proposed Program, this authority was not executed.

One commenter stated that the Secretary should convene representatives of the two proposed honey programs into a negotiated rulemaking session with the goal of considering a single honey research and promotion board to serve the entire industry. The Department disagrees with these comments given the state of the current rulemaking effort.

Five commenters stated their objection to the fact that producers will not vote on whether to continue or terminate the Current Order but instead packers and importers will vote on whether to implement the Proposed Order. Taking into account the duplicative nature of the Proposed Program with the Current Program, the Department has determined that the Current Order be terminated if the Proposed Order is approved in referendum.

Six commenters stated that the U.S. honey producers submitted a proposal for a U.S. honey program and that it should be voted on by the industry at the same time as the Proposed Order in this rule. However, the proposal for a U.S. honey program is under consideration by the Department at this time.

Six commenters requested that the comment period on this rule be extended because beekeepers do not read the **Federal Register**, the major honey publications have not announced the Proposed Order comment period, the Current Board only sent a notification to a select group, and the comment period came during one of the beekeepers' busiest times of the year.

The proposal to terminate the Current Order and implement a new Order has been under discussion by the industry for over three years and has been discussed at several Board and industry meetings, and the Current Board did send information to all assessment payers under the Current Program. In addition, the Department issued a news release to industry publications. Furthermore, the July/August issue of the American Beekeeping Federation newsletter contained a lengthy article about the proposed rule and invited beekeepers to comment on the rule. Finally, a 60-day comment period was provided for all interested parties to submit comments on this proposal. Based on all these points, the

Department did not extend the comment period.

Eight commenters stated that there is no need to extend the comment period on the Proposed Order and that doing so would potentially harm the industry. The commenters also stated that the industry had ample time to evaluate the proposal and asked the Department to stay with the original schedule. Another commenter stated that the industry received a great deal of information on this Proposed Order and that a steering committee was formed to address issues of concern. In addition, according to the commenter, the Proposed Order has been a topic of discussion at every annual meeting of every group in the industry for several years.

One commenter expressed food safety concerns regarding imported honey. Under the Proposed Order, activities for food safety are limited to research and information. There is no authority for the development of food safety standards for honey under the 1996 Act.

The commenter also expressed concern regarding the effect of pesticides on honeybees. Extensive research is being done regarding the decline of honeybees in the U.S. under the Current Order and the proponents of the Proposed Order indicated that such research would be continued under that Order.

One commenter stated that honey is too expensive and that the price needs to be reduced. One commenter stated that the Current Order is not doing anything to stop imported honey that is priced well below the U.S. market value for honey. The purpose of the Current Order as well as the Proposed Order is to maintain and expand markets for honey and honey products and does not regulate price. Accordingly, these comments are not within the scope of this rule.

One commenter stated that the Current Order does not help the farmers with disaster payments and pest research. Under the Current and Proposed Orders, there is authority to conduct pest research if proposed by the Board and approved by the Secretary. In fact, the Current Board has allocated funds to conduct research related to Colony Collapse Disorder in the past years. Under the Proposed Order, five percent of assessments collected would be allocated to research projects. However, programs for disaster payments are not authorized and therefore are not within the scope of this rule.

One commenter provided a comment on the Occupational Safety Health Administration's proposed rule on explosives. This comment was intended

for another regulation and it is outside the scope of this rule.

No comments were received related to the information collection requirement of this Proposed Order.

The Department made a nonsubstantive change to the Proposed Order to clarify that the Secretary has the authority to receive assessments and invest them on behalf of the Board if the Board is not in place by the date the first assessments are due.

The Proposed Order is summarized as follows: Section 1212.1 through Section 1212.32 of the Proposed Order define certain terms, such as honey, first handler, and importer.

Sections 1212.40 through 1212.48 of the Proposed 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 Honey Packers and Importers Board, which is the governing body authorized to administer the Proposed Order through the implementation of programs, plans, projects, budgets, contracts to promote and disseminate information about honey, subject to oversight by the Department.

Sections 1212.50 through 1212.55 cover budget review and approval; financial statements; authorize the collection assessments; specify how assessments would be used; specify who pays the assessment and how; exemptions; and authorize the imposition of a late-payment charge on past-due assessments.

The Association recommends a proposed 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 with the approval of the Department, 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 Honey Packers and Importers 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 Proposed 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 of Agriculture (Secretary); address referenda; authorize the Secretary to suspend or terminate the Proposed Order when deemed appropriate; prescribe proceedings after suspension or termination; and address personal liability, separability, amendments, and the OMB control number.

The Department has determined that this Proposed Order is consistent with and will effectuate the purposes of the 1996 Act.

For the Proposed Order to become effective, it must be approved by a majority of the eligible importers and first handlers voting in the referendum and by a majority of the volume of those voting in the referendum.

#### Referendum Order

Sonia Jimenez, Marlene Betts, and Kathie Notoro, of the USDA, AMS, Research and Promotion Branch, are designated as the referendum agents to conduct this referendum. The referendum procedures [7 CFR 1212.100 through 1212.108], which were issued pursuant to the Act, shall be used to conduct the referendum.

The referendum agents will mail registration instructions to all known eligible first handlers and importers in advance of the referendum. Any first handler or importer who does not receive registration instructions should contact the referendum agent cited under the “for further information” section no later than one week before the end of the registration period. Prior to the first day of the voting period, the referendum agents will mail the ballots to be cast in the referendum and voting instructions to all eligible voters. Persons who are first handlers and importers during the representative period are eligible to vote. Any eligible first handler and importer who does not receive a ballot should contact the referendum agent cited under the “For Further Information” section no later than one week before the end of the voting period. Ballots must be received by the referendum agents by the close of business (Eastern Time) on or before April 16, 2008, to be counted.

#### 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, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

1. Part 1212 is amended by adding subpart A to read as follows:

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

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

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

##### 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 cause 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” means 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 voting 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, and 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 the Secretary delegated the authority to act on his or her behalf.

**§ 1212.28 Suspend.**

“Suspend” means to issue a rule under § 553 of U.S.C. title 5 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 § 553 of U.S.C. Title 5 to cancel permanently the operation of an order 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 such 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 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 show 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 and 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 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; 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 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.

#### **§ 1212.47 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 enter 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 number 0409.00.00 and 2106.90.9988 by the Harmonized Tariff Schedule of the United States.

(f) The Board may recommend 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 with the approval of the Secretary. 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 establishes. 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 begins 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) 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, OMB control number 0581-0217, and OMB control number 0581- [NEW, to be assigned by OMB].

**PART 1240—[REMOVED]**

2. Part 1240 is removed.

Dated: February 26, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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