

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

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

RIN 0581-AC78

**Establishment of a U.S. Honey Producer Research, Promotion, and Consumer Information Order****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Proposed rule with request for comments.

**SUMMARY:** This rule proposes a new U.S. honey producer funded research and promotion program under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act). The proposed U.S. Honey Producer Research, Promotion and Consumer Information Order (Proposed U.S. Producer Order) was submitted to the Department of Agriculture (Department) by the American Honey Producers Association (AHPA). The Department proposes that an initial referendum be conducted to ascertain whether the persons to be covered by and assessed under the Proposed U.S. Producer Order favor the Order prior to it going into effect. The Proposed U.S. Producer Order would provide that producers pay an assessment to the U.S. Honey Producer Board (Proposed Board) at the rate of \$0.02 cents per pound of U.S. honey produced and shall only be imposed on U.S. producers. A producer who produces less than 100,000 pounds of U.S. honey per year would be eligible for a certificate of exemption.

The Proposed U.S. Producer Order also announces the Agricultural Marketing Service's (AMS) intention to request approval of new honey information collection requirements by the Office of Management and Budget (OMB) for the Proposed U.S. Producer Order.

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

**ADDRESSES:** Interested persons are invited to submit written comments on the Internet at: <http://www.regulations.gov> or to the Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, Room 0632-S, Stop 0244, 1400 Independence

Avenue SW., Washington, DC 20250-0244; fax (202) 205-2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

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

**FOR FURTHER INFORMATION CONTACT:**

Kimberly Coy, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, Room 0634-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 [kimberly.coy@ams.usda.gov](mailto:kimberly.coy@ams.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).

A proposed rule with the Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Packers and Importers Order) was published in the **Federal Register** on June 4, 2007 [72 FR 30924], with a 60-day comment period which ended on August 3, 2007. That rule also proposed termination of the Original Honey Research, Promotion, and Consumer Information Order (Original Order) and regulations in 7 CFR Part 1240. A second proposed rule and referendum order was published in the **Federal Register** on March 3, 2008 [73 FR 11474]. A final rule including the referendum procedures was published in the **Federal Register** the same day [73 FR 11470]. The final rule establishing the Packers and Importers Order was published in the **Federal Register** on May 21, 2008 [73 FR 29390]. A final rule terminating the Original Order was published in the **Federal Register** on April 17, 2009 [74 FR 17767].

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.

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

Under section 519 of the 1996 Act, 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 provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of the Department's final ruling.

In deciding 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. For example, in proposing the Packers and Importers Order, under the authority of the 1996 Act, the Department also proposed that the Original Order issued under the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601-4613) be terminated, after taking into account the duplicative nature of the two programs. As previously noted, a final rule terminating the Original Order was published in the **Federal Register** on April 17, 2009 [74 FR 17767]. However, the Proposed U.S. Producer Order and the previously promulgated Packers and Importers Order are authorized under the same statute, the 1996 Act.

Nonetheless, a more detailed comparison of the provisions of both programs appears later in this document to assist in the comment process. The following is an overview of the two programs.

The Packers and Importers Order and the Proposed U.S. Producer Order represent different interests within the honey industry. The Proposed U.S.

Producer Order represents the interests of U.S. producers while the Packers and Importers Order represents the interests of honey packers and importers. In addition, assessment requirements on both programs are on different parts of the industry.

The Proposed U.S. Producer Order provides for assessments to be paid by U.S. honey producers that produce in excess of 100,000 pounds of U.S. honey per year at the rate of \$0.02 cents per pound of U.S. honey produced. The number of entities to be assessed under the Proposed U.S. Producer Order would be around 317. The first handler would be responsible for collecting and remitting assessments. The reporting burden for the Proposed U.S. Producer Order is on the first handler.

The Packers and Importers Order de minimis amount is 250,000 pounds and the number of entities assessed is 75. Under the Packers and Importers Order, first handlers must pay an assessment rate of \$0.01 per pound on domestically produced honey or honey products that the handler handles and, each importer must pay an assessment of \$0.01 per pound on honey or honey products the importer imports into the United States. The reporting burden for the Packers and Importers Order is on both the first handler and the importer.

At the initial rate of \$0.02 per pound, revenue for the Proposed U.S. Producer Order would be approximately \$1.9 million. At the initial rate of \$0.01 per pound for the Packers and Importers Order, revenue will be approximately \$3 million. The aggregate collection of assessments for the honey industry will be approximately \$4.9 million.

The goals of the Proposed U.S. Producer Order are to: (1) Develop and finance an effective and coordinated research, promotion, industry information, and consumer education program for U.S. honey; (2) support and strengthen the position of the U.S. honey industry to ultimately increase consumption of U.S. honey; and (3) develop, maintain, and expand existing markets and enhance the image of U.S. honey.

The Department is soliciting comments from honey producers, first handlers, manufacturers, importers, consumers, industry organizations and other interested persons on the implementation of the Proposed U.S. Producer Order.

### Background

This rule proposes the implementation of a U.S. Producer Order. The American Honey Producers Association (AHPA), which represents more than 550 U.S. honey producers,

submitted a proposal to the Department for a national research, promotion, and consumer information order for U.S. honey on May 24, 2007.

The Proposed U.S. Producer Order is authorized under the 1996 Act. 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 U.S. Producer Order would provide for the continued development and financing of a coordinated program of research, promotion, and information. The Proposed U.S. Producer Order will authorize these activities for U.S. honey only.

According to the AHPA, the U.S. honey industry is facing serious threats due to Colony Collapse Disorder (CCD) and other factors. The survival of U.S. commercial beekeepers is dependent upon creating a strong market demand for domestic, U.S.-produced honey. The AHPA believes that the establishment and implementation of an all U.S. Honey Producer Board will permit U.S. beekeepers to specifically address the various factors that affect the U.S. honey industry. Funding of an all U.S. Honey Producer Board, will permit the development of programs related to issues such as the drastic decline in numbers of the honeybee due to (1) natural pests and diseases that kill or weaken the honeybee; (2) record droughts in the mid-west that have destroyed the plants and flowers honeybees use to gather pollen, and (3) the overall dramatic decrease in demand for U.S. honey.

U.S. honey producers have attempted to halt the long term decline in the numbers of honeybees (over 30 percent in the past twenty years), due to the above mentioned issues, costing them millions of dollars for treatment, colony development, maintenance, replacement, and in lost honey production and pollination services. The funds generated by a U.S. Honey Producer Program would be spent on conducting research activities designed to address these critical issues, as well as promotional activities to expand the demand for U.S. honey.

The honeybee is a fundamental component of U.S. agriculture supplying pollination to 90 different food, fiber, and seed crops at an estimated value of approximately \$15 to \$20 billion a year. The value of

pollination service is vastly greater than the total value of honey and wax produced by honey bees. Honey bees pollinate approximately one-third of the human diet each year in the United States, and more than 140 billion honey bees (representing 2 million colonies) are transported by beekeepers across the U.S. to pollinate crops. California grows 100% of the U.S. almond crop and supplies 80% of the world almonds. Each year, nearly one million honey bee hives are needed to pollinate the California Central Valley's 600,000 acres of almond groves. By the year 2012, it is estimated that this number may increase to two million hives if the expected increase in almond production grows to 800,000 acres. Blueberries and avocados also receive more than 90 percent of their pollination from honey bees.

Without an active, vibrant domestic honey industry, many other agricultural commodities may suffer due to the loss of essential pollination services that the U.S. honey industry provides. Due to many recent problems facing the U.S. honey industry, U.S. farmers were forced to import honey bees from other countries (New Zealand and Australia) for pollination services in 2006. This marked the first time since 1922 that honey bees were imported into the U.S. for pollination services, underscoring the fragile state of the U.S. honey industry and highlighting the need for a research and promotion program focused solely on the domestic honey industry. Although the United States can import honey, it may be difficult to import bees on the massive scale required by U.S. farm producers for the critical pollination of U.S. crops.

U.S. commercial beekeepers depend on the production of honey as well as pollination services in order to maintain a viable business. In order to remain in operation, U.S. beekeepers require a vibrant U.S. market place. The AHPA stated in their proposal that the creation of a U.S. honey producer program would help ensure the survival of the U.S. honey industry and strengthen other agricultural industries.

The AHPA believes that both the Proposed Board and the Packers and Importers Board, will more effectively operate programs specifically focused on each assessment payers' interests. The two boards would pursue their own distinct focus and agendas. Within this proposal is a discussion of some of the differences between the Proposed U.S. Producer Order and the Packers and Importers Order.

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, section 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; and provision for credits for generic and branded activities.

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.

For the Proposed U.S. Producer Order, the Department is recommending a referendum be conducted, preceding the Proposed U.S. Producer Order's effective date, to ascertain whether the persons to be covered and assessed favor the Proposed U.S. Producer Order going into effect. Implementation of the Proposed U.S. Producer Order would require the approval of a majority of the producers voting in the referendum, which also represent a majority of the volume of U.S. honey produced during the representative period by those voting in the referendum. Specific procedures to be followed in such referendum will be published in a separate **Federal Register** publication.

In addition, section 518 of the 1996 Act requires the Department to conduct subsequent referenda: (1) Not later than seven years after assessments first begin under the Proposed U.S. Producer Order; or (2) at the request of the Proposed Board established under the Proposed U.S. Producer 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 U.S. Producer Order, including referenda costs, would be paid from assessments.

#### Order Assessments

The funds generated through the mandatory assessments on domestically produced U.S. honey would be used to pay for promotion, research, and consumer and industry information as well as the administration, maintenance, and functioning of the Proposed Board and shall be solely used to support U.S. honey.

Under the Proposed U.S. Producer Order, "first handler" would be defined to mean the person who first handles U.S. honey, including a producer who handles U.S. honey of the producer's own production. The term is further defined as follows:

(a) When a producer delivers U.S. honey from the producer's own production to a packer or processor for processing in preparation for marketing and consumption, the packer or processor is the first handler, regardless of whether such honey is handled for the packer's or processor's own account or for the account of the producer or the account of other persons.

(b) When a producer delivers U.S. honey to a handler who takes title to such honey, and places it in storage, such handler is the first handler.

(c) When a producer delivers U.S. honey to a commercial storage facility for the purpose of holding such honey under the producer's own account for later sale, the first handler of such honey would be identified on the basis of later handling of such honey.

(d) When a producer delivers U.S. honey to a processor who processes and packages a portion of such honey for the processor's own account and sells the balance, with or without further processing, to another processor or commercial user, the first processor is the first handler for all the honey.

(e) When a producer supplies U.S. honey to a cooperative marketing organization that sells or markets such honey, with or without further processing and packaging, the cooperative marketing organization becomes the first handler upon physical delivery to such cooperative.

(f) U.S. honey used from the producer's own production for the purpose of feeding the producer's own bees is not considered as handled. Honey in any form sold and shipped to any persons for the purpose of feeding bees is handled and is subject to

assessment. The buyer of such honey for feeding bees is the first handler.

(g) When a producer packages and sells U.S. honey of the producer's own production at a roadside stand or other facility to consumers or sells to wholesale or retail outlets or other buyers, the producer is both a producer and a first handler.

(h) When a producer uses U.S. honey from the producer's own production in the manufacture of formulated products for the producer's own account and for the account of others, the producer is both a producer and a first handler.

In addition, "handle" means to process, package, sell, transport, purchase, or in any other way place U.S. honey, or cause them to be placed, in commerce. This term shall include selling unprocessed U.S. honey that will be consumed with or without further processing or packaging. This term shall not include the transportation of unprocessed U.S. honey by a producer to a first handler or the transportation of processed or unprocessed U.S. honey by a commercial carrier for the account of the first handler or producer. This term shall not include the purchase of U.S. honey by a consumer or other end-user of the U.S. honey.

The Proposed U.S. Producer Order would provide that producers pay an assessment to the Proposed Board at the rate of \$0.02 cents per pound of U.S. honey produced and shall only be imposed on U.S. producers. The Proposed U.S. Producer Order establishes that each first handler, responsible for collecting and remitting assessments, shall pay the Proposed Board the amount due on a date as established by the Proposed Board. The Proposed Board may provide for different payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

Except as otherwise provided for, the first handler shall collect the assessment from the producer or deduct such assessment from the proceeds paid to the producer on whose U.S. honey the assessment is made, and remit the assessments to the Proposed Board. The first handler shall furnish the producer with evidence of such payment. Any such collection or deduction of assessment shall be made no later than the time when the assessment becomes payable to the Proposed Board. The first handler shall maintain separate records for each U.S. producer's honey handled, including U.S. honey produced by said first handler. Should a first handler fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Proposed Board.

Under the Proposed U.S. Producer Order, first handlers shall remit to the Proposed Board the assessment on all U.S. honey for which they act as first handler, in addition to the assessment owed on U.S. honey they produce. The first handler shall collect and pay assessments to the Proposed Board unless such first handler has received documentation acceptable to the Proposed Board that the assessment has been previously paid. Assessments shall be paid to the Proposed Board at such time and in such manner as the Proposed Board, with the Secretary's approval, directs pursuant to this part. The Proposed Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

The assessment levied on U.S. honey producers would be used to pay for promotion, research, and consumer education and industry information developed and designed to benefit honey produced in the U.S., as well as the administration, maintenance, and functioning of the Board. Expenses incurred by the Department in implementing and administering the Proposed U.S. Producer 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 U.S. Producer Order.

Under the Proposed U.S. Producer Order, a producer who produces less than 100,000 pounds of U.S. honey per year would be eligible for a certificate of exemption.

In addition, a producer who operates under an approved NOP system plan, produces 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 U.S. Producer Order.

The Proposed U.S. Producer Order allows the Proposed Board to recommend to the Secretary an increase to the assessment, as it deems appropriate, by an affirmative vote of five Board members. The Proposed Board may not recommend an increase in the assessment of more than \$0.05 per pound of U.S. honey and an assessment may not increase by more than \$0.005 in any single fiscal year. Any change in the assessment rate shall

be subject to rulemaking and announced by the Proposed Board at least 30 days prior to becoming effective.

Although the 1996 Act allows for credits of assessments for generic and branded activities, the AHPA, who proposed the U.S. Producer Order, did not elect to include this provision.

The Proposed U.S. Producer Order establishes that producers will be responsible for paying assessments. The Order further states that the first handler will be the responsible entity for collecting the assessments and filing specific reports and maintaining records regarding the amount of U.S. honey placed in commerce.

Each first handler would be required to maintain any books and records necessary to carry out the provisions of the Proposed U.S. Producer Order for two years beyond the fiscal period to which they apply. This would include the books and records necessary to verify any required reports. These books and records would be made available to the Board's or Department's employees or agents during normal business hours for inspection if necessary.

The Proposed U.S. Producer Order provides that all officers, employees, and agents of the Department and of the respective Boards 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 Proposed U.S. Producer 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 Proposed U.S. Producer Order and a statement of the particular provisions of the Proposed U.S. Producer Order violated by the person would be allowed.

It is anticipated that, based on current estimates of the number of commercial beekeepers in the U.S. that would be covered under this proposal, the Proposed Board would collect approximately \$1.9 million dollars per year and that program administrative expenses could be kept at a minimum so that approximately \$1.6 million would be available to develop and implement research and promotion

programs designed specifically to benefit honey produced in the United States.

It is also anticipated that since only 317 producers would be covered under the Proposed U.S. Producer Order, program administrative expenditures would be kept to a minimum.

#### **Establishment of the U.S. Honey Producer 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 Proposed Board from nominees submitted in accordance with a Proposed U.S. Producer Order. The Proposed U.S. Producer Order would provide for the establishment of an U.S. Honey Producer Board to administer the Proposed U.S. Producer Order under AMS oversight. The AHPA has proposed that the Proposed Board be composed of no more than seven honey producers and seven alternates.

Each term of office on the Proposed Board would begin on April 1 and end on March 31, with the exception of the initial Board's term of office. The Proposed Board would nominate the seven producer members and their alternate representatives appointed by the Secretary from seven regions of the United States, to carry out a program of promotion, research, and information regarding U.S. honey. 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 six producing States in 2007 included North Dakota, California, Florida, South Dakota, Montana, and Minnesota.

One producer member and one alternate would be appointed to serve on the Proposed Board from each of the following regions:

(1) Region 1: Washington, Oregon, Idaho, California, Nevada, Utah, Alaska, and Hawaii.

(2) Region 2: Montana, Wyoming, Nebraska, Kansas, Colorado, Arizona, and New Mexico.

(3) Region 3: North Dakota and South Dakota.

(4) Region 4: Minnesota, Iowa, Wisconsin, and Michigan.

(5) Region 5: Texas, Oklahoma, Missouri, Arkansas, Tennessee, Louisiana, Mississippi, and Alabama.

(6) Region 6: Florida, Georgia, and all other U.S. territories and possessions.

(7) Region 7: Illinois, Indiana, Ohio, Kentucky, Virginia, North Carolina, South Carolina, West Virginia,

Maryland, District of Columbia, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine.

In the Proposed U.S. Producer Order, U.S. honey producers within each of the seven regions would receive from the Proposed Board, an established list of producers eligible to serve on the Proposed Board and would notify all producers within the regions that they may nominate persons to serve as members and alternates on the Proposed Board.

The Proposed U.S. Producer Order indicates that the Proposed 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 Proposed Board's recommendation demonstrates cause.

The 1996 Act provides that to ensure fair and equitable representation, the composition of a board shall reflect the geographic distribution of the production of the agriculture commodity in the United States.

Under the Proposed U.S. Producer Order at least once every five years, but not more frequently than once in each three year period, the Proposed Board would review the geographical distribution in the United States of the quantities of production of U.S. honey covered by the Proposed U.S. Producer Order.

The review, based on a five year average annual review of assessments and/or Department statistics, would enable the Proposed Board to evaluate whether the Proposed Board membership is reflective of the regional representation of U.S. honey produced.

Under the Proposed U.S. Producer Order, Board members could serve terms of three years and are eligible to serve a maximum of two consecutive terms. When the Proposed Board is first established, three producers would be assigned initial terms of four years; two producers would be assigned initial terms of three years; and two producers would be assigned initial terms of two years. Thereafter, each of these positions will carry a full three-year term. Members serving initial terms of two or four years would be eligible to serve a second term of three years. Each Board member and alternate member would continue to serve until the member's or alternate's successor meets all qualifications and is appointed by the Secretary.

In the event that any member or alternate of the Proposed Board ceases to be a member of the category of members from which the member was appointed to the Proposed Board, such position shall become vacant. Provided, that if, as a result of the Proposed Board reallocation a producer member or alternate is no longer from the region from which such person was appointed, the affected member or alternate may serve out the term for which such person was appointed.

Under the Proposed U.S. Producer Order, a quorum is met if there are a majority of members present including alternates acting in place of members.

#### **Comparison of the Proposed U.S. Producer Order and the Packers and Importers Order**

A major difference between the Packers and Importers Order and the Proposed U.S. Producer Order is that the Proposed U.S. Producer Order provides for assessments to be paid by the producers of U.S. honey rather than first handlers and importers of honey and honey products.

Other differences between the Proposed U.S. Producer Order and the Packers and Importers Order are the entities assessed, the de minimis amount, and the assessment rate.

The Proposed U.S. Producer Order provides for assessments to be paid by U.S. honey producers that produce in excess of 100,000 pounds of U.S. honey per year. The number of entities assessed under the Proposed U.S. Producer Order would be around 317. In addition, the Proposed U.S. Producer Order would provide that producers pay an assessment to the Proposed Board at the rate of \$0.02 cents per pound of U.S. honey produced and shall only be imposed on U.S. producers. The first handler will be responsible for collecting and remitting assessments. The reporting burden under the Proposed U.S. Producer Order would be on the first handler.

The Packers and Importers Order de minimis amount is 250,000 pounds and the number of entities assessed is 75. Under the Packers and Importers Order, first handlers must pay an assessment rate of \$0.01 per pound on domestically produced honey or honey products that the handler handles and, each importer must pay an assessment of \$0.01 per pound on honey or honey products the importer imports into the United States. The reporting burden for the Packers and Importers Order is on both the first handler and the importer.

At the initial rate of \$0.02 per pound, revenue for the Proposed U.S. Producer Order would be approximately \$1.9

million. At the initial rate of \$0.01 per pound for the Packers and Importers Order, revenue will be approximately \$3 million.

In addition to differences in the entities assessed, the de minimis amount, and the assessment rate, there are other comparative differences between the Proposed U.S. Producer Order and the Packers and Importers Order including reporting costs, the makeup of the Boards, and the nomination process.

The Proposed Board would consist of seven producers and each member would have an alternate. The Secretary would appoint members to the Proposed Board from nominees submitted in accordance with the Proposed U.S. Producer Order. Each term of office will begin on April 1 and end on March 31.

In the Proposed U.S. Producer Order, U.S. honey producers within each of the seven regions would receive from the Proposed Board, an established list of producers eligible to serve on the Proposed Board and would notify all producers within the regions that they may nominate persons to serve as members and alternates on the Proposed Board.

The Packers and Importers Board consists of 10 members; three first handler representatives, two importer representatives, one importer-handler representative, three producer representatives, and one marketing cooperative representative. A term of office begins on January 1.

Under the Packers and Importers Order, first handlers, producers, and a national honey marketing cooperative representative represent those entities in the United States. Board members from each of these groups are nominated by national organizations representing each of them respectively. Importers and the importer-handler on the Packers and Importers Board are nominated by national organizations representing importers.

The estimated total cost of providing information to the Proposed Board by all respondents would be \$47,751. This total has been estimated by multiplying 1,447 total hours required for reporting and recordkeeping by \$33, the average mean hourly earnings of various occupations involved in keeping this information. In contrast, under the Packers and Importers Order an estimated 350 total hours are required for reporting and recordkeeping at a total cost of \$11,550.

#### **Other Order Provisions**

The 1996 Act requires that for fiscal years beginning 3 years after the date of the Board's establishment, the Board

shall not expend for administration, maintenance, and functioning of the Board in a single fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Board for that fiscal year. There is no specific requirement for research funds under the Proposed U.S. Producer Order.

The Proposed U.S. Producer Order provides for a continuance referendum every seven years.

This Proposed U.S. Producer Order includes definitions, provisions concerning establishment of the Board, expenses and assessments, plans and projects, reports, books and records, and other miscellaneous provisions.

The Department modified the AHPA'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 AHPA's proposal were: (1) To remove the terms "handler" and "producer-packer" and adopt "first handler" as the term to be used throughout the Proposed U.S. Producer Order; (2) to describe in more detail the section describing reports, books, and records that need to be provided by the Board on its financial position; (3) to delete any references to quality standards and prices as these provisions are not authorized under the 1996 Act; (4) to remove the refund of assessment language; (5) to add language which states that any change in the assessment rate shall be subject to rulemaking; and (6) to modify section numbers as appropriate to match the above necessary changes made to the proposal.

#### **Initial Regulatory Flexibility Act Analysis**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the 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 is 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 Packers and Importers Order and the Proposed U.S. Producer Order represent different interests within the honey industry. The Proposed U.S. Producer Order represents the interest of U.S. producers while the Packers and Importers Order represents the interests of honey packers and importers. In addition, assessment requirements on both programs would be required of different segments of the industry.

The Proposed U.S. Producer Order provides for assessments to be paid by U.S. honey producers that produce in excess of 100,000 pounds of U.S. honey per year at the rate of \$0.02 cents per pound of U.S. honey produced. The number of entities assessed under the Proposed U.S. Producer Order would be around 317. An estimated 1,683 producers would be exempt under the 100,000 pound exemption, while an estimated 5 producers would be exempt as organic producers. The first handler will be responsible for collecting and remitting assessments.

The Packers and Importers Order de minimis amount is 250,000 pounds and the number of entities assessed is 75. Under the Packers and Importers Order, first handlers must pay an assessment rate of \$0.01 per pound on domestically produced honey or honey products that the handler handles and, each importer must pay an assessment of \$0.01 per pound on honey or honey products the importer imports into the United States. The reporting burden for the Packers and Importers Order is on both the first handler and the importer.

At the initial rate of \$0.02 per pound, revenue for the Proposed U.S. Producer Order would be approximately \$1.9 million. At the initial rate of \$0.01 per pound for the Packers and Importers Order, revenue will be approximately \$3 million. The aggregate collection of assessments for the honey industry will be approximately \$4.9 million.

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 would be conducted prior to putting this Proposed U.S. Producer Order in effect. The Proposed U.S. Producer 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 U.S. honey of those voting in the referendum. Every seven years, the Department shall conduct a referendum

to determine whether producers of U.S. honey 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 and more of the producers required to pay assessments; or at the request of the Board.

The Proposed U.S. Producer Order provides for first handlers to file reports to the Proposed Board. While the Proposed U.S. Producer Order would impose certain reporting and recordkeeping requirements on first handlers, the information required under the Proposed U.S. Producer 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 U.S. Producer Program, and their use is necessary to fulfill the intent of the 1996 Act. An estimated 63 first handler respondents and 317 producer respondents would provide information to the Proposed Board. The estimated total cost of providing information to the Proposed Board by all respondents would be \$47,751. This total has been estimated by multiplying 1,447 total hours required for reporting and recordkeeping by \$33, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics.

The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of \$750,000 or less annually and small agricultural service firms as those having annual receipts of \$7.0 million or less. Using these criteria, under the Proposed U.S. Producer Order, most producers and handlers would be considered small businesses.

National Agricultural Statistic Service (NASS) data reports that U.S. production of honey, from producers with five or more colonies, totaled less than 155 million pounds in 2006, a decrease of almost 16 percent from 2004. The top six producing States in 2006 included North Dakota, California, Florida, South Dakota, Montana, and Minnesota. NASS reported the value of honey sold from these six states in 2006 was \$84,583,000 and the volume produced was 90,433,000 pounds. By comparison, as recently as 2000, U.S. commercial beekeepers produced over 220 million pounds of honey. In 2006, honey prices increased during 2006 to 104.2 cents, up 14 percent from 91.8 cents in 2005, due to congressional action.

Based on the assessment reports in connection with the Original Order and recorded by Customs, seventeen countries produced over 93 percent of the honey imported into the U.S. In 2005, five of these countries produced almost 79 percent of the total honey imported into the United States. These countries and their share of the imports are: China (27%), Argentina (21%), Vietnam (13%), Canada (10%), and India (8%). Imports accounted for 69 percent of U.S. consumption in 2006, an increase of 18 percent, up from 51 percent since 2002.

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

The Proposed Board may develop guidelines for compliance with the Proposed U.S. Producer Order. The Proposed Board may 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. Any changes in the assessment rate shall be subject to rulemaking. The administrative expenses of the Proposed 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 section 516 of the 1996 Act, and other sections provide for alternatives.

The Proposed U.S. Producer Order is designed to: (1) Develop and finance an effective and coordinated research, promotion, industry information, and consumer education program for U.S. honey; (2) strengthen the position of the U.S. honey industry and ultimately increase consumption of U.S. honey; and (3) maintain, develop, and expand existing markets for U.S. honey.

Additionally, the Proposed U.S. Producer Order would impose some additional reporting and recordkeeping costs on first handlers; however, the reporting requirements are minimal. If the Proposed U.S. Producer Order is implemented, the reporting and recordkeeping burden cost would be \$47,916 under the Proposed U.S. Producer Order. These costs should be offset by the benefits derived by the operation of the Proposed U.S. Producer Order.

Section 516 authorizes an order to provide for exemption of *de minimis*

quantities (the AHPA has proposed less than 100,000 pounds 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; and provision for credits for generic and branded activities.

Also, under authority provided by 7 U.S.C. 7401, the Proposed U.S. Producer Order exempts producers who operate under an approved National Organic Program (NOP) (7 CFR part 205) system plan, produces 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 Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

While the Department has performed this initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities, in order to have as much data as possible for a more comprehensive analysis of the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, the Department requests information on the expected benefits and costs of implementing the Proposed U.S. Producer Program.

#### **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 U.S. Honey Producer 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:* Awaiting renewal.

*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 U.S. Producer Order, producers would be required to pay assessments and first handlers

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

Under the Proposed U.S. Producer Order producers are responsible to pay an assessment of \$0.02 per pound.

An estimated 63 first handler respondents and 317 U.S. producer respondents would provide information to the Proposed Board. The estimated total cost of providing information to the Proposed Board by all respondents would be \$47,751. This total has been estimated by multiplying 1,447 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 U.S. Producer 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 U.S. Producer 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 Proposed 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.

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:* Producers.

*Estimated number of Respondents:* 28 for initial nominations, 9 in subsequent years.

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

*Estimated Total Annual Burden on Respondents:* 4.2 hours for the initial nominations and 1.35 hours annually thereafter.

*(2) Monthly Report by Each First Handler of U.S. 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 U.S. honey handled.

*Respondents:* First handlers.

*Estimated number of Respondents:* 63.

*Estimated number of Responses per Respondent:* 12.

*Estimated Total Annual Burden on Respondents:* 378 hours.

*(3) 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 producers.

*Estimated Number of Respondents:* 380.

*Estimated Total Annual Burden of Respondents:* 190 hours.

*(4) An Exemption Application for Producers Who Would Be Exempt From Assessments. (Certification Of Exemption)*

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

*Respondents:* Exempt Producers.

*Estimated Number of Respondents:* 1683.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 841.50 hours.

*(5) Nomination Appointment Form*

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

*Respondents:* Producers.

*Estimated Number of Respondents:* 30.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 7.5 hours.

*(6) Nomination Appointment Ballot*

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

*Respondents:* Producers.

*Estimated Number of Respondents:* 105.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 26.25 hours.

*(7) Organic Exemption Form. (Approved under OMB Form No. 0581-0217)*

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

*Respondents:* Producers.

*Estimated Number of Respondents:* 5.  
*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 2.5 hours.

**Request for Public Comment on the Paperwork Reduction Act**

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Proposed U.S. Producer Order and the Department's oversight of the Proposed U.S. Producer 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.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581-NEW. In addition, the docket number, date, and page number of this issue of the **Federal**

**Register** also should be referenced. Comments should be sent to the USDA Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Room 0632-S, Washington, DC 20250-0244. Comments may also be sent by facsimile to (202) 205-2800 or electronically to <http://www.regulations.gov>. All comments received will be available for public inspection during regular business hours at the same address. Comments regarding information collection should also be sent to the Office of Management and Budget at: Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this rule by the date specified would be considered prior to finalizing this action.

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

**List of Subjects in 7 CFR Part 1245**

Administrative practice and procedure, Advertising, Consumer education, U.S. Honey, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

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

1. Add Part 1245 to read as follows:

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

**Definitions**

Subpart A—U.S. Honey Producer Research, Promotion, and Consumer Information Order Sec.

1245.1	Act.
1245.2	Board.
1245.3	Conflict of interest.
1245.4	Department.
1245.5	Exporter.
1245.6	First handler.
1245.7	Fiscal period and marketing year.
1245.8	Handle.



- 1245.9 Honey.
- 1245.10 Honey production.
- 1245.11 Information.
- 1245.12 Marketing.
- 1245.13 Order.
- 1245.14 Part and subpart.
- 1245.15 Person.
- 1245.16 Plans and projects.
- 1245.17 Producer.
- 1245.18 Promotion.
- 1245.19 Referendum.
- 1245.20 Research.
- 1245.21 Secretary.
- 1245.22 State.
- 1245.23 Suspend.
- 1245.24 Terminate.
- 1245.25 United States.

#### U.S. Honey Producer Board

- 1245.30 Establishment and membership.
- 1245.31 Nominations and voting.
- 1245.32 Term of office.
- 1245.33 Board reapportionment.
- 1245.34 Vacancies.
- 1245.35 Procedure.
- 1245.36 Compensation and reimbursement.
- 1245.37 Powers and duties.
- 1245.38 Prohibited activities.

#### Expenses and Assessments

- 1245.40 Budget and expenses.
- 1245.41 Assessments.
- 1245.42 Late payment.
- 1245.43 Exemption from assessment.
- 1245.44 Operating reserve.

#### Promotion, Research, and Information

- 1245.50 Plans and projects.
- 1245.51 Contracts.
- 1245.52 Patents, copyrights, trademarks, information, publications, and product formulations.

#### Reports, Books, and Records

- 1245.60 First handler reports.
- 1245.61 Books and records.
- 1245.62 Confidential treatment.

#### Miscellaneous

- 1245.70 Right of the Secretary.
- 1245.71 Referenda.
- 1245.72 Suspension or termination.
- 1245.73 Proceedings after termination.
- 1245.74 Effect of termination or amendment.
- 1245.75 Personal liability.
- 1245.76 Separability.
- 1245.77 Amendments.
- 1245.78 OMB Control Numbers.

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

#### Subpart A—U.S. Honey Producer Research, Promotion, and Consumer Information Order

##### Definitions

##### § 1245.1 Act.

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

##### § 1245.2 Board.

*Board* or “U.S. Honey Producer Board” means the administrative body established pursuant to § 1245.30, or such other name as recommended by the Board and approved by the Department.

##### § 1245.3 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.

##### § 1245.4 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.

##### § 1245.5 Exporter.

*Exporter* means any person who exports U.S. honey from the United States.

##### § 1245.6 First handler.

*First handler* means the person who first handles U.S. honey, including a producer who handles U.S. honey of the producer’s own production. Persons who are first handlers include but are not limited to the following:

(a) When a producer delivers U.S. honey from the producer’s own production to a packer or processor for processing in preparation for marketing and consumption, the packer or processor is the first handler, regardless of whether such honey is handled for the packer’s or processor’s own account or for the account of the producer or the account of other persons.

(b) When a producer delivers U.S. honey to a handler who takes title to such honey, and places it in storage, such handler is the first handler.

(c) When a producer delivers U.S. honey to a commercial storage facility for the purpose of holding such honey under the producer’s own account for later sale, the first handler of such honey would be identified on the basis of later handling of such honey.

(d) When a producer delivers U.S. honey to a processor who processes and packages a portion of such lot of honey for the processor’s own account and sells the balance, with or without further processing, to another processor or commercial user, the first processor is the first handler for all the honey.

(e) When a producer supplies U.S. honey to a cooperative marketing

organization that sells or markets such honey, with or without further processing and packaging, the cooperative marketing organization becomes the first handler upon physical delivery to such cooperative.

(f) When a producer uses U.S. honey from the producer’s own production for the purpose of feeding the producer’s own bees, that honey is not considered as handled. Honey in any form sold and shipped to any persons for the purpose of feeding bees is handled and is subject to assessment. The buyer of such honey for feeding bees is the first handler.

(g) When a producer packages and sells U.S. honey of the producer’s own production at a roadside stand or other facility to consumers or sells to wholesale or retail outlets or other buyers, the producer is both a producer and a first handler.

(h) When a producer uses U.S. honey from the producer’s own production in the manufacture of formulated products for the producer’s own account and for the account of others, the producer is both a producer and a first handler.

##### § 1245.7 Fiscal period and marketing year.

*Fiscal period* means the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

##### § 1245.8 Handle.

*Handle* means to process, package, sell, transport, purchase or in any other way place honey, or causes it 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 first handler or transportation by a commercial carrier of honey, whether processed or unprocessed for the account of the first handler or producer. This term shall not include the purchase of honey by a consumer or other end user of the honey.

##### § 1245.9 Honey.

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

##### § 1245.10 Honey production.

*Honey production* means all beekeeping operations related to managing honey bee colonies to produce U.S. honey, harvesting U.S. honey from the colonies, extracting honey from the honeycombs, and preparing U.S. honey for sale and further processing.

**§ 1245.11 Information.**

*Information* means information, programs, or activities that are designed to develop new domestic or foreign markets, maintain or expand such markets, develop new marketing strategies, increase market efficiency, or enhance the image of U.S. honey. These include:

(a) *Consumer information*, 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 U.S. honey; and

(b) *Industry information* means any action that will lead to the development of new markets, new marketing strategies, or increased efficiency for the U.S. honey industry, and activities to enhance the image or strengthen the position of the U.S. honey industry.

**§ 1245.12 Marketing.**

*Marketing* means the sale or other disposition of U.S. honey in the domestic market or the foreign market.

**§ 1245.13 Order.**

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

**§ 1245.14 Part and subpart.**

*Part* means the Honey Producer Research, Promotion, Consumer Education, and Industry Information Order (Order) Part 1245 and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a "subpart" of such part.

**§ 1245.15 Person.**

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

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

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

**§ 1245.16 Plans and projects.**

*Plans and projects* mean those research, promotion and information programs, plans, or projects established pursuant to this subpart.

**§ 1245.17 Producer.**

*Producer* means any person who produces honey in any State for sale in commerce.

**§ 1245.18 Promotion.**

*Promotion* means any action, including paid advertising and public relations, to advance the desirability or marketability of U.S. honey to the general public and the food industry with the express intent of improving the competitive position, expanding existing markets, increasing consumption, and enhancing the image of U.S. honey.

**§ 1245.19 Referendum.**

*Referendum* means a referendum to be conducted by the Secretary pursuant to the Act whereby U.S. honey producers 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 who also represent a majority of the volume of U.S. honey produced.

**§ 1245.20 Research.**

*Research* means any type of systematic study, analysis, test, or investigation, including studies testing the effectiveness of market development and promotion efforts, or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, or production of U.S. honey. 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, U.S. honey production, and honey bees.

**§ 1245.21 Secretary.**

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

**§ 1245.22 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.

**§ 1245.23 Suspend.**

*Suspend* means to issue a rule under section 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.

**§ 1245.24 Terminate.**

*Terminate* means to issue a rule under section 553 of U.S.C. Title 5 to cancel permanently the operation of an order beginning on a date certain specified in the rule.

**§ 1245.25 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.

**U.S. Honey Producer Board****§ 1245.30 Establishment and membership.**

(a) There is hereby established a U.S. Honey Producer Board, composed of no more than seven honey producers and seven alternates, appointed by the Secretary, to carry out a program of promotion, research, and information regarding U.S. honey.

(b) One producer member and one alternate shall be appointed to serve on the Board from each of the following regions:

(1) Region 1: Washington, Oregon, Idaho, California, Nevada, Utah, Alaska, and Hawaii.

(2) Region 2: Montana, Wyoming, Nebraska, Kansas, Colorado, Arizona, and New Mexico.

(3) Region 3: North Dakota and South Dakota.

(4) Region 4: Minnesota, Iowa, Wisconsin, and Michigan.

(5) Region 5: Texas, Oklahoma, Missouri, Arkansas, Tennessee, Louisiana, Mississippi, and Alabama.

(6) Region 6: Florida, Georgia, and all other U.S. territories and possessions.

(7) Region 7: Illinois, Indiana, Ohio, Kentucky, Virginia, North Carolina, South Carolina, West Virginia, Maryland, District of Columbia, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine.

**§ 1245.31 Nominations and voting.**

(a) The Board shall seek nominations for members and alternates from the specific regions set forth in this subpart in accordance with the following procedures:

(1) The Board shall establish a list of producers that are eligible to serve on the Board and shall notify all producers that they may nominate persons to serve as members and alternates on the Board.

Nominations shall be received by mail from any producer that resides in the region in which one or more vacancies will occur. Persons that are interested in nominating an individual to serve on the Board shall submit to the Board in writing the name and mailing address of the proposed nominee and such other information as the Board may require, in order to place such individual on the ballot.

(2) Once proposed nominations have been submitted from the applicable region, the Board shall cause each proposed nominee, if the individual qualifies, to be placed on the region's nominee ballot. The Board then shall mail a ballot to each known producer within the region.

(3) Within 45 days after a mail ballot is issued, the Board shall validate the ballots cast, tabulate the votes, and provide the Secretary with the results of the vote and the identification of the two producers receiving the highest number of votes for each open position on the Board.

(b) For each region, the Board shall submit to the Secretary the name of the nominee receiving the highest number of votes and the name of the nominee receiving the second highest number of votes as the producers' first and second choice nominees. The Secretary shall select the producer members and alternates of the Board from the names of those persons receiving the highest and second highest number of votes within a specific region, as submitted by the Board.

(c) Notice of balloting to nominate candidates for the Board shall be publicized by the Board to producers in the region involved, and to the Secretary, at least 90 days before the region's nominee ballot is issued except for the initial Board.

(d) In proposing nominees for inclusion on a mail ballot, nominations must be received by the Board at least 30 days before the region's nominee ballot is issued.

(e) If a producer nominee is engaged in the production of honey in more than one region, such producer shall participate within the region that such producer so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(f) Each producer within a region shall cast a ballot for each open position on the Board assigned to such region in accordance with the procedures prescribed in this subpart. The completed ballot must be returned to the Board or its designee within 30 days after the ballot is issued.

(g) The Board shall provide nominees with qualification statements and other specified information. Each nominee selected in the mail ballot will be contacted by the Board and asked to forward such completed documentation to the Board within 14 days of such notification.

(h) The Department will conduct the nomination process for the initial Board using the same procedures described above.

#### **§ 1245.32 Term of office.**

The members of the Board and their alternates shall serve for terms of three years. No member or alternate shall serve more than two consecutive three-year terms. The term of office shall begin on April 1. When the Board is first established, three producers will be assigned initial terms of four years; two producers will be assigned initial terms of three years; and two producers will be assigned initial terms of two years. 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 Board member and alternate member shall continue to serve until the member's or alternate's successor meets all qualifications and is appointed by the Secretary.

#### **§ 1245.33 Board reapportionment.**

(a) At least once every five years, but not more frequently than once in a three-year period, the Board shall review the geographic distribution of the quantities of U.S. honey assessed under this subpart. The review will be based on Board assessment records and statistics from the Department.

(b) If warranted as a result of this review, the Board shall recommend for the Secretary's approval changes in the regional representation of honey producers. Any changes in the makeup of the Board shall be subject to rulemaking by the Department.

(c) Recommendations made under paragraph (b) of this section shall be based on the 5-year average annual assessments and statistics from the Department, determined pursuant to the review that is conducted under paragraph (a) of this section.

(d) Any such reallocation shall be made at least six months prior to the date on which terms of office of the Board begin and shall become effective at least 30 days prior to such date.

#### **§ 1245.34 Vacancies.**

(a) In the event any member of the Board ceases to be a producer, such position shall automatically become vacant: Provided, that if, as a result of

Board reallocation pursuant to § 1245.33, a producer member or alternate is no longer from the region from which such person was appointed, the affected member or alternate may serve out the term for which such person was appointed.

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

If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary may remove such member from office.

(c) Should any member position become vacant, the alternate for that member shall automatically assume the position of that member. At its next meeting, the Board shall nominate a replacement for such alternate. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired terms of such member and alternate shall be nominated and appointed in the manner specified in § 1245.31, except that nomination and replacement shall not be required if the unexpired terms are less than six months.

#### **§ 1245.35 Procedure.**

(a) A majority of members, including alternates acting in place of members of the Board, shall constitute a quorum. Alternates shall serve whenever the member is absent from a meeting or is disqualified.

(b) All Board members shall be notified at least 30 days in advance of all Board and committee meetings unless an emergency meeting is declared.

(c) Any action of the Board shall require the concurring votes of a majority of those present and voting.

(d) At the start of each fiscal period, the Board will select a chairperson and vice chairperson. The chairperson, or in the chairperson's absence the vice chairperson, shall conduct meetings throughout that fiscal period.

(e) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may act upon the concurring votes of a majority of its members by mail, telephone, electronic mail, facsimile, or any other means of communication, provided that all members are notified and given the opportunity to vote. All votes shall be promptly confirmed in writing. Any action so taken shall have the same force and effect as though such action

had been taken at a properly convened meeting of the Board. All votes shall be recorded in the Board minutes.

(f) There shall be no voting by proxy.

(g) The Chairperson shall be a voting member of the Board.

(h) The organization of the Board and the procedures for conducting meetings shall be in accordance with the Board's bylaws, which shall be established by the Board and approved by the Secretary.

#### **§ 1245.36 Compensation and reimbursement.**

(a) Members of the Board, alternates when acting as members, and the members of any special committees formed by the Board shall serve without compensation.

(b) Members of the Board, alternates, and the members of any special committees shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred in the performance of their Board duties. The Board shall have the authority to request the attendance of alternates of any or all meetings, notwithstanding the expected or actual presence of the respective members.

#### **§ 1245.37 Powers and duties.**

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and provisions of the Act and to collect assessments;

(b) To carry out promotion, research, and information plans and projects related to U.S. honey;

(c) To develop and recommend to the Department for approval such rules, regulations, and by-laws for the conduct of its business as it may deem advisable;

(d) To recommend to the Secretary amendments to the Order;

(e) To pay the costs of promotion, research, and information plans and projects with assessments collected pursuant to section 1245.41, earnings from invested assessments, and other funds authorized under this part.

(f) To appoint and convene, from time to time, special committees and subcommittees which may include producers, first handlers, exporters, members of wholesale or retail outlets for honey, or other members of the public to assist in the development of research, promotion, advertising, information plans, or projects for U.S. honey;

(g) To prepare and submit to the Secretary for approval 60 days in advance of the beginning of a fiscal period, a budget of its anticipated expenses in the administration of this

part, including the probable costs of all promotion, research, and information activities and to recommend a rate of assessment;

(h) To meet and organize and select from among its members a chairperson, and other officers;

(i) To require its employees to receive, investigate, and report to the Secretary complaints of violations of the Order;

(j) To employ persons, other than members, as it may deem necessary and to determine the compensation and define the duties of each employee;

(k) To cause its books to be audited by an independent auditor at the end of each fiscal period and to submit a copy of each audit to the Secretary;

(l) To periodically prepare and make public and to make available to producers reports of its activities carried out and, at least once each fiscal period, to make public an accounting of funds received and expended;

(m) To give to the Secretary the same notice of meetings of the Board and any special committees as is given to members in order that representatives of the Secretary may attend such meetings;

(n) To notify honey producers of all Board meetings through press releases or other means;

(o) To maintain such records as the Secretary may require and make such records available to the Secretary for inspection and audit;

(p) To account for the receipt and disbursement of all funds in the possession, or under the control, of the Board; and

(q) To develop plans and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of plans or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and make such other reports available as the Board or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that show the

estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

#### **§ 1245.38 Prohibited activities.**

The Board may not engage in, and shall prohibit its employees and agents from engaging in:

(a) Any action that would be a conflict of interest; and

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental policy or action, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to the Order.

#### **Expenses and Assessments**

##### **§ 1245.40 Budget and expenses.**

(a) At least 60 days prior to the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal period covering its anticipated expenses and disbursements in the administration of this subpart. Each such budget shall include:

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

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

(3) A summary of proposed expenditures for each 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, including shifting funds from one plan or project to another, must be approved by the Secretary before such amendment or addition shall occur. 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 Secretary.

(d) The Board is authorized to incur expenses, including a provision for a reserve for operating contingencies, for research, promotion, advertising, or information activities and such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary. Such expenses shall be paid from funds received by the Board, including assessments, contributions from persons, and other funds available to the Board.

(e) With approval of the Secretary, 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 research, promotion, advertising, or information activities. Voluntary contributions shall be free from any encumbrances 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, and supervision of the Order, including all referenda costs incurred in connection with the Order.

(h) For fiscal years beginning 3 years after the date of the Board's establishment, the Board shall not expend for administration, maintenance, and functioning of the Board in a single fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Board for that fiscal year. Such limitation on spending shall not include reimbursements to the Secretary.

#### § 1245.41 Assessments.

(a) The assessment rate shall be \$0.02 per pound of U.S. honey produced and shall only be imposed on producers of 100,000 pounds or more per fiscal year. Such assessments shall not be levied on the portion of U.S. honey which does not enter commerce and which is utilized solely to sustain a producer's own colonies of bees.

(b) The assessment rate shall not be increased without an affirmative vote of five members of the Board. The assessment rate shall not be increased by more than \$0.005 per fiscal year and

shall not exceed \$0.05 per pound. Any change in the assessment rate shall be announced by the Board at least 30 days prior to becoming effective and shall not be subject to a vote in a referendum. Any change in the assessment rate shall be subject to rulemaking.

(c) Except as provided in this section, the first handler shall collect the assessment from the producer or deduct such assessment from the proceeds paid to the producer on whose honey the assessment is made, and remit the assessments to the Board. The first handler shall furnish the producer with evidence of such payment. Any such collection or deduction of assessment shall be made not later than the time when the assessment becomes payable to the Board. The first handler shall maintain separate records for each producer's honey handled, including honey produced by said handler. Should a first handler fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board.

(d) First handlers shall remit to the Board the assessment on all U.S. honey for which they act as first handler, in addition to the assessment owed on U.S. honey they produce.

(e) The first handler shall collect and pay assessments to the Board unless such handler has received documentation acceptable to the Board that the assessment has been previously paid.

(f) Assessments shall be paid to the Board on a monthly basis no later than the fifteenth day of the month following the month in which the U.S. honey was produced unless the Board determines that assessments due shall be paid to the Board at a different time and manner, with approval of the Secretary. The Board may recommend different payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(g) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

#### § 1245.42 Late payment.

(a) There shall be a late-payment charge imposed on any person who fails to remit to the Board the total amount for which any such person is liable on or before the payment due date established by the Board. The amount of the late-payment charge shall be prescribed in regulations issued by the Secretary.

(b) There shall also be imposed on any person subject to a late-payment charge, an additional charge in the form of interest on the outstanding portion of

any amount for which the person is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

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

#### § 1243.43 Exemption from assessment.

(a) A producer who produces less than 100,000 pounds of U.S. honey per year shall be exempt from the payment of assessments. Such producer may apply to the Board—on a form provided by the Board—for a certificate of exemption. Such producer shall certify that the producer's production of U.S. honey shall be less than 100,000 pounds for the fiscal year for which the exemption is claimed.

(b) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, produces 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) To obtain the exemption in paragraph (b) of this section, an eligible producer shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before the beginning of the fiscal period as long as the producer continues to be eligible for the exemption.

(d) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in the Organic Act, a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(e) If the producer complies with the requirements of paragraph (b) of this section, the Board will grant an assessment exemption and shall issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15 of the fiscal year, the Board will have 60 days to approve the exemption request; after August 15 of the fiscal year, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(f) An exemption will apply immediately following the issuance of the certificate of exemption.

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

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

#### § 1245.44 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 shall not exceed one fiscal period's budget.

#### Promotion, Research, and Information

##### § 1245.50 Plans and projects.

(a) The Board shall receive and evaluate, or, on its own initiative, develop and submit to the Secretary for approval, any plan or project authorized under this part. Such plans or projects may provide for:

(1) The establishment, issuance, effectuation, or administration of appropriate activities for research, promotion, advertising, or information, including industry and consumer information, with respect to U.S. honey;

(2) The establishment and conduct of marketing research and development activities to encourage, improve, or expand the acquisition of knowledge pertaining to U.S. honey or their consumption and use, nutritional benefits or the marketing and utilization of U.S. honey;

(3) The development and expansion of the sale of U.S. honey in foreign markets; or

(4) The sponsorship of research designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, U.S. honey production, and honey bees.

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

(c) Each plan or project implemented under this part shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or information. If the Board finds that any such plan or project does not contribute

to an effective program of promotion, research, or information, then the Board shall terminate such plan or project.

(d) In addition to any evaluation that may be carried out pursuant to paragraph (c) of this section, the Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and plans and projects conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

(e) No plan or project including advertising shall be false or misleading or disparaging to another agricultural commodity including but not limited to unfair or deceptive acts or practices with respect to quality, value, or use of any competing product. In addition, no reference to a brand name, trade name, or State identification will be made.

##### § 1245.51 Contracts.

(a) Subject to the approval of the Secretary, the Board may:

(1) Enter into contracts and agreements to carry out promotion, research, and information activities relating to U.S. honey, including contracts and agreements with producer associations or other entities as considered appropriate by the Secretary; and

(2) Pay the cost of approved promotion, research, and information activities using assessments collected under the Order, earnings obtained from assessments, and other income of the Board.

(b) Each contract or agreement shall provide that any person who enters into the contract or agreement with the Board shall:

(1) Develop and submit to the Board a proposed activity together with a budget that specifies the cost to be incurred to carry out the activity;

(2) Keep accurate records of all of its transactions relating to the contract or agreement;

(3) Account for funds received and expended in connection with the contract or agreement;

(4) Make periodic reports to the Board of activities conducted under the contract or agreement; and

(5) Make such other reports as the Board or the Secretary considers relevant.

(c) Each contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a plan or project together with a budget

or budgets that shall show the estimated cost to be incurred for such plan or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit account for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receive or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

##### § 1245.52 Patents, copyrights, trademarks, information, publications, and product formulations.

(a) Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart:

(1) 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;

(2) Shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and

(3) May be licensed subject to approval by the Department.

(b) Upon termination of this subpart, section 1245.73 shall apply to determine disposition of all such property.

#### Reports, Books, and Records

##### § 1245.60 First handler reports.

(a) Each first handler subject to this part shall be required to report to the Board, at such time and in such manner as the Board may prescribe such information as may be necessary for the Board to perform its duties. Such reports may include, but shall not be limited to the following:

(1) The first handler's name and address;

(2) The date of report (which is also date of payment to the Board);

(3) The period covered by report; and

(4) The total quantity of U.S. domestic honey determined as assessable during the reporting period.

(b) First handlers who collect assessments from producers or withhold assessments for their accounts or pay

the assessments themselves shall also include with each report a list of all such producers whose honey was handled during the period, their addresses, and the total assessable quantities handled for each such producer.

(c) First handlers shall also include with each report the following:

(1) The total quantity of U.S. honey acquired during the reporting period;

(2) The total quantity of U.S. honey handled during such period;

(3) The amount of U.S. honey acquired from each producer, giving the name and address of each producer;

(4) The assessments collected during the reporting period;

(5) The quantity of U.S. honey purchased from a first handler responsible for paying the assessment due pursuant to this Order;

(6) The date that assessment payments were made on U.S. honey handled;

(7) The first handler's tax identification number;

(8) The quantity of U.S. honey processed for sale from a first handler's own production; and

(9) A record of each transaction for U.S. honey on which assessments had already been paid, including a statement from the seller that the assessment had been paid.

(d) In the event of a first handler's death, bankruptcy, receivership, or incapacity to act, the representative of the handler or his or her estate, shall be considered the first handler for the purposes of this part.

#### **§ 1245.61 Books and records.**

Each first handler and producer shall maintain, and during normal business hours, make available for inspection by employees or agents of the Board or the Secretary, such books and records as are necessary to carry out the provisions of this part, including such records as are necessary to verify any required reports. A member or alternate member of the Board is prohibited from conducting inspections authorized by this section. Such books and records shall be maintained for two years beyond the fiscal period of their applicability.

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

#### **§ 1245.62 Confidential treatment.**

(a) All information obtained from the books, records, or reports required to be maintained by producers shall be kept confidential by all employees and agents of the Board and all officers and employees of the Department, and shall

not be disclosed to the public. Only such information as the Secretary deems relevant shall be disclosed, and then only in a judicial proceeding or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart.

(b) Nothing in this subpart shall be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of producers or first handlers or statistical data collected therefrom, if such statements do not identify the information furnished by any person; or

(2) 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**

##### **§ 1245.70 Right of the Secretary.**

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

##### **§ 1245.71 Referenda.**

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

(1) Every seven years, to determine whether producers of U.S. honey favor the continuation, suspension, or termination of the Order. The Order shall continue if it is favored by a majority of the producers voting for approval in the referendum and who also represent a majority of the volume of U.S. honey produced.

(2) At the request of the Board or when petitioned by ten (10) percent or more of the number of persons eligible to vote under the Order, but not more often than once every five years under this paragraph; or

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

##### **§ 1245.72 Suspension or termination.**

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary

determines that its suspension or termination is approved or favored by a majority of the producers voting who, during a representative period determined by the Secretary, have been engaged in the production of U.S. honey.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this Order and regulations issued hereunder in an orderly manner.

#### **§ 1245.73 Proceedings after termination.**

(a) Upon the termination of this subpart, the 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. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1245.37;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and

(4) Upon the direction of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations as imposed upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Department to be utilized, to the extent practicable, in the interest of continuing one or more of the honey research or education programs hitherto authorized.

**§ 1245.74 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 subpart;

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

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

**§ 1245.75 Personal liability.**

No member, alternate member, employee, or agent of the Board shall 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 such member, alternate member, employee, or agent, except for acts of dishonesty or willful misconduct.

**§ 1245.76 Separability.**

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

**§ 1245.77 Amendments.**

Amendments to this Order may be proposed from time to time by the Board or by any interested person affected by

the provisions of the Act, including the Department.

**§ 1245.78 OMB control numbers.**

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].

Dated: June 30, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator, Agricultural Marketing Service.*

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