

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

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**Source:** 51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, unless otherwise noted.

### **Definitions**

#### **Subpart A—Honey Research, Promotion, and Consumer Information Order**

##### **§ 1240.1 Act.**

*Act* means the Honey Research, Promotion, and Consumer Information Act (Pub. L. 98–590) and any amendments thereto.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 66 FR 21829, May 1, 2001]

§1240.2 Board.

*Board* or *National Honey Board* means Honey Board, the administrative body established pursuant to §1240.30.

[66 FR 21829, May 1, 2001]

##### **§ 1240.3 Committee.**

*Committee* means the National Honey Nominations Committee established pursuant to §1240.32.

[66 FR 21829, May 1, 2001]

**§ 1240.4 Consumer education.**

*Consumer education* means the act of providing information to the public on the usage and care of honey and honey products.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 66 FR 21829, May 1, 2001]

**§ 1240.5 Department or USDA.**

*Department or USDA* means the United States Department of Agriculture.

[66 FR 21829, May 1, 2001]

**§ 1240.6 Exporter.**

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

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 66 FR 21829, May 1, 2001]

**§ 1240.7 Fiscal period and marketing year.**

*Fiscal period and marketing year* 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.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991, and further redesignated at 66 FR 21829, May 1, 2001]

**§ 1240.8 Handle.**

*Handle* means to process, package, sell, transport, purchase or in any other way place honey or honey products, or cause them to be placed, in the current of commerce. This term shall include selling unprocessed honey that will be consumed without further processing or packaging. This term shall not include the transportation of unprocessed honey by a producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed, for the account of the handler or producer. This term shall not include the purchase of honey or a honey product by a consumer or other end-user of the honey or honey product.

[66 FR 21829, May 1, 2001]

**§ 1240.9 Handler.**

*Handler* means any person who handles honey or honey products.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 66 FR 21829, May 1, 2001]

**§ 1240.10 Honey.**

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

[66 FR 21829, May 1, 2001]

**§ 1240.11 Honey production.**

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

[66 FR 21829, May 1, 2001]

**§ 1240.12 Honey products.**

*Honey products* means products wherein honey is a principal ingredient.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 66 FR 21829, May 1, 2001]

**§ 1240.13 Importer.**

*Importer* means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey or honey products outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such honey or honey products.

[66 FR 21829, May 1, 2001]

**§ 1240.14 Industry information.**

*Industry information* means information or a program that will lead to the development of new domestic and foreign markets, new marketing strategies, or increased efficiency for the honey industry, or an activity to enhance the image of honey and honey products and of the honey industry.

[66 FR 21830, May 1, 2001]

**§ 1240.15 Marketing.**

*Marketing* means the sale or other disposition in commerce of honey or honey products.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

**§ 1240.16 National honey marketing cooperative.**

*National honey marketing cooperative* means a cooperative that markets its products in at least two of the following four regions of the United States, as determined by the Secretary:

- (a) The Atlantic Coast, including the District of Columbia and the Commonwealth of Puerto Rico;
- (b) The Mideast;
- (c) The Midwest; and
- (d) The Pacific, including the states of Alaska and Hawaii.

[66 FR 21830, May 1, 2001]

**§ 1240.17 Part and subpart.**

*Part* means the Honey Research, Promotion, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the order shall be a “subpart” of such part.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991, and further redesignated at 66 FR 21829, May 1, 2001]

**§ 1240.18 Person.**

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

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 66 FR 21829, May 1, 2001]

**§ 1240.19 Plans and projects.**

*Plans* and *projects* means those research, promotion, industry information, and consumer education plans, studies, or projects established pursuant to §§1240.38 and 1240.39.

[66 FR 21830, May 1, 2001]

**§ 1240.20 Producer.**

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

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 66 FR 21829, May 1, 2001]

**§ 1240.21 Producer-packer.**

*Producer-packer* means any person who is both a producer and handler of honey or honey products.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 66 FR 21829, May 1, 2001]

**§ 1240.22 Promotion.**

*Promotion* means any action, including paid advertising and public relations, to present a favorable image for honey or honey products to the public with the express intent of improving the competitive position and stimulating sales of honey or honey products.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991, and further redesignated at 66 FR 21829, May 1, 2001]

**§ 1240.23 Qualified national organization representing handler interests.**

*Qualified national organization representing handler interests* means an organization that the Secretary certifies as being eligible to recommend nominations to the Committee for handler and alternate handler members of the Board under §1240.32.

[66 FR 21830, May 1, 2001]

**§ 1240.24 Qualified national organization representing importer interests.**

*Qualified national organization representing importer interests* means an organization that the Secretary certifies as being eligible to recommend nominations to the Committee for importer and alternate importer members of the Board under §1240.32.

[66 FR 21830, May 1, 2001]

**§ 1240.25 Research.**

*Research* means any type of systematic study or investigation, including studies testing the effectiveness of market development and promotion efforts, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of honey or honey products. Such term shall also include studies on bees to advance the cost effectiveness, competitiveness, efficiency,

pest and disease control, and other management aspects of beekeeping, honey production, and honey bees.

[66 FR 21830, May 1, 2001]

**§ 1240.26 Secretary.**

*Secretary* means the Secretary of Agriculture of the United States, or any other officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his/her stead.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 66 FR 21829, May 1, 2001]

**§ 1240.27 State.**

*State* means any of the fifty States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991, and further redesignated at 66 FR 21829, May 1, 2001]

**§ 1240.28 State association.**

*State association* or *association* means that organization of beekeepers in a State which is generally recognized as representing the beekeepers of that State.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 66 FR 21829, May 1, 2001]

**Honey Board**

**§ 1240.30 Establishment and membership.**

A Honey Board is established to administer the terms and provisions of this part. The Board shall consist of twelve (12) members, each of whom shall have an alternate. Seven members and seven alternates shall be honey producers; two members and two alternates shall be honey handlers; two members and two alternates shall be honey importers; and one member and one alternate shall be an officer, director, or employee of a national honey marketing cooperative. The Board shall be appointed by the Secretary from nominations submitted by the Committee, pursuant to §1240.32. Notwithstanding any other provision of this part, at least 50 percent of the members of the Board shall be honey producers.

[66 FR 21830, May 1, 2001]



**§ 1240.31 Term of office.**

The members of the Board and their alternates shall serve for terms of three years, except that terms may be staggered periodically as recommended by the Board and as determined by the Secretary or as determined by the Secretary alone. No member or alternate shall serve more than two consecutive three-year terms. The term of office shall begin on April 1. 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.

[66 FR 21830, May 1, 2001]

**§ 1240.32 Nominations.**

All nominations to the Board authorized under §1240.30 herein shall be made in the following manner.

*(a) Establishment of National Honey Nominations Committee.*

(1) There is established a National Honey Nominations Committee, which shall consist of not more than one member from each State, appointed by the Secretary from nominations submitted by each State beekeeper association. Wherever there is more than one eligible association within a State, the Secretary shall designate the association most representative of the honey producers, handlers, and importers not exempt under §1240.42 (a) and (b) to make nominations for that State.

(2) If a State Association does not submit a nomination for the Committee, the Secretary may select a member of the honey industry from that State to represent that State on the Committee. However, if a State which is not one of the top twenty honey producing States (as determined by the Secretary) does not submit a nomination, such State shall not be represented on the Committee.

(3) Members of the Committee shall serve for three-year terms, except that the term of appointments to the Committee may be staggered periodically, as determined by the Secretary. No member shall serve more than two consecutive three-year terms. The term of office shall begin on July 1.

(4) The Committee shall select its Chairperson by a majority vote.

(5) The members of the Committee shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred in performing their duties as members of the Committee and approved by the Board. Such expenses shall be paid from funds collected by the Board pursuant to §1240.41.

*(b) Nominations to the Board.*

(1) The Committee shall nominate the members and alternate members of the Board and submit such nominations promptly to the Secretary for approval.

(2) The Committee shall meet annually to make such nominations, or, at the determination of the Chairperson, the Committee may conduct its business by mail ballot in lieu of an annual meeting.

(3) A majority of the Committee shall constitute a quorum for voting at an annual meeting. In the event of a mail ballot, votes must be received from a majority of the Committee to constitute a quorum.

(4) At least 50 percent of the members from the twenty leading honey-producing states must vote in any nomination of members to the Board.

(5) For the purpose of nominating producer members to the Board, the Secretary shall establish seven regions on the basis of the production of honey. For the purpose of facilitating initial nominations to the Honey Board, the following regions shall be the initial regions:

Region 1: Washington, Oregon, Idaho, California, Nevada, Utah, Alaska, and Hawaii.  
Region 2: Montana, Wyoming, Nebraska, Kansas, Colorado, Arizona, and New Mexico.  
Region 3: North Dakota and South Dakota. Region 4: Minnesota, Iowa, Wisconsin, and Michigan. Region 5: Texas, Oklahoma, Missouri, Arkansas, Tennessee, Louisiana, Mississippi, and Alabama. Region 6: Florida, Georgia, and Puerto Rico. 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.

(6) In nominating producer members to the Board, no producer-packer who, during any three of the preceding five years, purchased for resale more honey than the producer-packer produced shall be eligible for nomination or appointment to the Board as a producer or as an alternate to a producer.

(7) In nominating importer members to the Board, no importer who, during any three of the preceding five years, did not receive at least 75 percent of the gross income generated by the sale of honey and honey products from the sale of imported honey and honey products shall be eligible for nomination or appointment to the Board as an importer or as an alternate to an importer.

(8) Six months before the new Board term begins, the Committee shall submit to the Secretary nominations for positions on the Board. The number of nominations will directly correspond to the number of producer, handler, importer, and cooperative member positions due to become vacant. Selection of nominees by the Committee will be pursuant to the following:

(i) Nominations for producer members and alternate producer members will be from the regions in which one or more vacancies will occur;

(ii) Nominations for handler members and alternate handler members will be based on recommendations made by qualified national organizations representing handler interests, or, if the Secretary determines that there is not a qualified national organization representing handler interests, by individual handlers who have paid assessments to the Board on honey or honey products handled;

(iii) Nominations for importer members and alternate importer members will be based on recommendations made by qualified national organizations representing importer interests, or, if the Secretary determines that there is not a qualified national organization representing importer interests, by individual importers who have paid assessments to the Board on imported honey or honey products; and

(iv) Nominations for a member and alternate member who are officers, directors, or employees of national honey marketing cooperatives will be based on recommendations made by qualified national honey marketing cooperatives.

(9) *Qualified national organization representing handler interests.* To be certified by the Secretary as a qualified national organization representing handler interests, an association or organization must meet the following criteria, as evidenced in a factual report submitted by the association or organization to the Secretary:

(i) The organization's membership is comprised primarily of honey handlers;

(ii) The organization represents a substantial number of handlers who handle a substantial volume of honey in at least 20 states;

(iii) The organization has a history of stability and permanency;

(iv) A primary or overriding purpose of the organization is to promote the economic welfare of honey handlers;

(v) A portion of the operating funds of the organization are derived from handlers; and

(vi) The organization demonstrates the ability and willingness to further the purposes of the Act.

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

(i) The organization's total paid membership is comprised of a significant number of importers or the organization's total paid membership represents at least a majority of the volume of honey imported into the United States;

(ii) The organization has a history of stability and permanency;

(iii) A primary or overriding purpose of the organization is to promote the economic welfare of honey importers;

(iv) Substantial geographic territory is covered by the active membership of the organization;

(v) A portion of the operating funds of the organization are derived from importers; and

(vi) The organization demonstrates the ability and willingness to further the purposes of the Act.

(11) As a condition of certification by the Secretary as a qualified national organization representing handler or importer interests, an organization shall agree to:

(i) Notify handlers and importers who are not members of the organization of Board nomination opportunities for which the organization is certified to make recommendations to the Committee; and

(ii) Consider the nomination of handlers and importers who are not members when making the nominations of the organization to the Committee, if nonmembers indicate an interest in serving on the Board.

(12) A certification determination by the Secretary of a qualified organization representing handler or importer interests shall be final.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37456, Aug. 7, 1991; 66 FR 21830, May 1, 2001]

### **§ 1240.33 Board reconstitution.**

(a) Every five years, the Board shall review the geographic distribution of the quantities of domestically produced honey assessed under this subpart and the changes in the annual average percentage of assessments owed by importers under this subpart relative to assessments owed by producers of domestic honey. The Board shall conduct the initial review required by this paragraph prior to the first continuance referendum conducted after May 31, 2001.

(b)(1) If warranted as a result of this review, the Board shall recommend for the Secretary's approval:

(i) Changes in the regional representation of honey producers; and/or

(ii) The addition of Board members.

(2) If such allocations are necessary to reflect changes in the proportion of domestic and imported honey assessed under this subpart or the source of assessments on imported honey or honey products, the Board may not recommend the addition of members pursuant to paragraph (b)(1)(ii) of this section unless the proportion of assessments owed by importers compared with the proportion of assessments owed on domestic honey by producers changed by more than 6 percent from the base period proportion determined in accordance with paragraph (d) of this section.

(c) Except as provided in paragraph (d) of this section, recommendations made under paragraph (b) of this section shall be based on the 5-year average annual assessments, excluding the 2 years containing the highest and lowest disparity between the proportion of assessments owed from imported and domestic honey or honey products, determined pursuant to the review that is conducted under paragraph (a) of this section.

(d) The base period proportions for determining the magnitude of change under paragraph (c) of this section shall be the proportions determined during the prior review conducted under this section. In the case of the initial review, the base period proportions shall be the proportions determined by the Board for fiscal period 1996.

(e) Notwithstanding any other provision of this section, at least 50 percent of the members of the Board shall be honey producers.

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

[66 FR 21831, May 1, 2001]

#### **§ 1240.34 Vacancies.**

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant: *Provided*, That if, as a result of Board reconstitution pursuant to §1240.33, a producer member or alternate is no longer from the region from which such person was appointed, the affected member and/or alternate may serve out the term for which such person was appointed, or if a member, whose position is based on the member's status as an importer is subject to reallocation by the Board, the affected member and/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 shall remove such member from office.

(c) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member. At its next meeting, the Committee shall nominate a replacement for said 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 §§1240.30 and 1240.32, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37456, Aug. 7, 1991; 66 FR 21831, May 1, 2001]

#### **§ 1240.35 Procedure.**

(a) A majority of members, of which at least 50 percent are producers, including alternates acting in place of members of the Board, shall constitute a quorum: *Provided*, That such alternates shall serve only whenever the member is absent from a meeting or is disqualified. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may act upon the concurring votes of a majority of its members by mail, telephone, telegraph, or by other means of communication: *Provided*, That each proposition is explained accurately, fully, and substantially identically to each member. All telephone votes shall be promptly confirmed in writing and recorded in the Board minutes.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 66 FR 21832, May 1, 2001]

#### **§ 1240.36 Attendance.**

Members of the Board and the members of any special panels shall be reimbursed for reasonable out-of-pocket expenses incurred when performing Board business. 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.

#### **§ 1240.37 Powers.**

The Board shall have the following powers subject to §1240.61:

- (a) To administer this subpart in accordance with its terms and provisions of the Act;
- (b) To make rules and regulations to effectuate the terms and conditions of this subpart;

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

**§ 1240.38 Duties.**

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

(a) To meet and organize and to select from among its members a chairperson and such other officers as may be necessary; to select committees and subcommittees from its membership and consultants; to adopt such rules, regulations, and by-laws for the conduct of its business as it may deem advisable.

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

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

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

(e) To develop programs and plans and to enter into contracts or agreements with the approval of the Secretary for the development and carrying out of programs and plans of research, promotion, advertising, consumer education, or industry information and the payment of the costs thereof with funds collected pursuant to this part;

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

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

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

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

(j) To submit to the Secretary such information pertaining to this subpart as the Secretary may request;

(k) To notify honey producers, producer-packers, handlers, and importers of all Board meetings through press releases or other means;

(l) To appoint and convene, from time to time, working committees which may include producers, handlers, producer-packers, importers, exporters, members of wholesale or retail outlets for honey, or other members of the public to assist in the development of research, promotion, advertising, consumer education, and industry information programs for honey; and

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

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37456, Aug. 7, 1991; 66 FR 21832, May 1, 2001]

## **Research, Promotion, Consumer Education, and Industry Information**

### **§ 1240.39 Research, promotion, consumer education, and industry information.**

(a) *Scope of activities.* The Board shall develop and submit to the Secretary for approval any plans, programs, or projects authorized in this section. Such plans, programs, and projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans, programs, or projects for consumer education, industry information, advertising, and promotion of honey and honey products designed to strengthen the position of the honey industry in the marketplace and to maintain, develop, and expand markets for honey and honey products;

(2) The establishment and conduct of marketing research and development plans to the end that the acquisition of knowledge pertaining to honey and honey products or their consumption and use may be encouraged or expanded, or to the end that the marketing and utilization of honey and honey products may be encouraged, expanded, improved, or made more efficient: *Provided*, That supply management programs or other programs that would otherwise limit the right of the individual honey producer to produce honey shall not be conducted under, or as a part of, this subpart;

(3) The development and expansion of honey and honey product sales in foreign markets;

(4) A prohibition on advertising or other promotion programs that make any false or unwarranted claims on behalf of honey or its products or false or unwarranted statements with respect to the attributes or use of any competing product;



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

(6) The conduct of activities which may lead to the development of new markets or marketing strategies for honey or honey products. In addition, the Board may conduct activities designed to increase the efficiency of the honey industry or activities to enhance the image of honey and honey products and the honey industry;

(7) Periodic evaluation by the Board of each plan, program, or project authorized under this part to insure that each plan, program, or project contributes to an effective and coordinated program of research, promotion, consumer education, and industry information and submit such evaluation to the Secretary. If the Board or the Secretary finds that a plan, program, or project does not further the purposes of the Act, then the Board shall terminate such plan, program, or project; and

(8) The Board to enter into contracts or make agreements for the development and carrying out of research, promotion, consumer education, and industry information programs, and pay for the costs of such contracts or agreements with funds received by the Board.

(b) *Independent evaluation.* In addition to any evaluation that may be carried out pursuant to paragraph (a)(7) 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 this subpart and other plans, programs, 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.

[66 FR 21832, May 1, 2001]

## **Expenses and Assessments**

### **§ 1240.40 Budget and expenses.**

(a) Sixty days in advance of the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including expenses of the Committee and probable costs of research, promotion, consumer education, and industry information.

(b) The Board is authorized to incur expenses for: research, promotion, consumer education, and industry information; such other expenses for the administration, maintenance, and functioning of the Board and the Committee as may be authorized by the Secretary; any operating reserve established pursuant to §1240.43; and those administrative costs incurred by the Department specified in paragraph (d) of this section.

The funds to cover such expenses shall be paid from assessments collected pursuant to §1240.41, donations from any person not subject to assessments under this subpart, and other funds available to the Board including those collected pursuant to §1240.67 and subject to the limitations contained in that section.

(c) The Board shall reimburse the Department from assessments for administrative costs incurred by the Department with respect to this order after its promulgation. The Department shall also be reimbursed for administrative expenses incurred by it for the conduct of referenda.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 66 FR 21832, May 1, 2001]

#### **§ 1240.41 Assessments.**

(a) *Domestic honey and honey products.* The assessment rate on honey produced in the United States and handled shall be 1 cent per pound of honey produced.

(b) *Imported honey and honey products.* The assessment rate on honey or honey products imported into the United States shall be 1 cent per pound of honey or honey products imported. The importer of imported honey and honey products shall pay the assessment to the Board through the U.S. Customs Service at the time of entry of such honey and honey products into the United States. Should the U.S. Customs Service fail to collect an assessment from an importer, the importer shall be responsible for the payment of the assessment to the Board.

(c) *General.* (1) Except as provided in §1240.42 and in paragraphs (c)(2) and (e) of this section, the first handler shall be responsible for the collection of such assessment from the producer and payment thereof to the Board. The first handler shall maintain separate records for each producer's honey handled, including honey produced by said handler.

(2) Producer-packers shall pay to the Board the assessment on all honey or honey products for which they act as first handler, in addition to the assessment owed on honey they produce.

(3) 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.

(4) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs pursuant to this part. Such regulations may provide for different handler, importer, producer, or producer-packer payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(d) *Late payment.* (1) There shall be a late-payment charge imposed on any importer, handler, or producer-packer who fails to remit to the Board the total amount for which any such importer, producer, or producer-packer is liable on or before the payment due

date established by the Board. The amount of the late-payment charge shall be set by the Board subject to approval by the Secretary.

(2) There shall also be imposed on any importer, handler, or producer-packer subject to a late-payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the importer, handler, or producer-packer is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

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

(e) *Honey under loan.* Whenever a loan is made on honey under an USDA loan program, the Secretary shall provide that the assessment be deducted from the proceeds of the loan or the loan deficiency payment, if applicable, and that the amount of such assessment shall be forwarded to the Board, except that the assessment shall not be deducted by the Secretary in the case of a honey marketing cooperative approved by the Department's Commodity Credit Corporation that deducts the assessment from its member producers. As soon as practicable after the assessment is deducted from the loan funds or loan deficiency payment, the Secretary shall provide the producer with proof of payment of the assessment.

(f) *Advance payment.* The Board is authorized to accept advance payment of assessments by handlers, importers, or producer-packers that shall be credited toward any amount for which the handlers, importers, or producer-packers may become liable. The Board is not obligated to pay interest on any advance payment.

[66 FR 21833, May 1, 2001]

#### **§ 1240.42 Exemption from assessment.**

(a) A producer who produces less than 6,000 pounds of honey per year, a producer-packer who produces and handles less than 6,000 pounds of honey or honey products per year, or an importer who imports less than 6,000 pounds of honey or honey products per year shall be exempt from assessment: *Provided*, such honey or honey products are distributed directly through local retail outlets such as roadside stands, farmers markets, groceries, or other outlets as otherwise determined by the Secretary during such year.

(b) A producer or importer who consumes honey at home or donates honey to a nonprofit, government, or other entity, as determined appropriate by the Secretary, rather than sell such honey, shall be exempt from the assessment on that honey so consumed or donated, except for honey donated that is later sold in a commercial outlet by a donee or donee's assignee.

(c) If, after a person has been exempt from paying assessments for any year under this section, and such person no longer meets the requirements of this section for an exemption, such person shall file a report with the Board in the form and manner

prescribed by the Board and pay an assessment on or before March 15 of the subsequent year on all honey or honey products produced or imported by such person during the year for which the person claimed the exemption.

(d) The Board may recommend to the Secretary that honey exported from the United States be exempted from the provisions of this subpart and include procedures for the refund of assessments on such honey and such safeguards as may be necessary to prevent improper use of this exemption.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37457, Aug. 7, 1991; 66 FR 21833, May 1, 2001]

#### **§ 1240.43 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. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 66 FR 21829, May 1, 2001]

#### **§ 1240.44 Voluntary quality assurance program.**

(a) The Board is authorized to develop and carry out a voluntary quality assurance program concerning purity standards for honey and honey products. The Secretary shall have the authority to approve or disapprove such program.

(b) The program may include the following components:

(1) The establishment of an official Board seal of approval to be displayed on honey and honey products which meet such standards of purity as are established under the program;

(2) Actions to encourage producers, handlers, and importers to participate in the program;

(3) Actions to encourage consumers to purchase honey and honey products bearing the official seal of approval; and

(4) Periodic inspections by the Secretary, or other parties approved by the Secretary, of honey and honey products of persons who participate in the program.

(c) To be eligible to display the official seal of approval under paragraph (b)(1) of this section on a honey or honey product, a producer, handler, or importer shall participate in the voluntary program described in paragraph (a) of this section.

[66 FR 21833, May 1, 2001]

## **Reports, Books, and Records**

### **§ 1240.50 Reports.**

Each handler, importer, producer, or producer-packer subject to this part shall be required to report to the employees of the Board, at such time and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

- (a) For producers or producer-packers: the quantity of honey produced and the total number of bee colonies maintained.
- (b) For handlers and producer-packers: the total quantity of honey acquired during the reporting period; the total quantity of honey and honey products handled during such period; the amount of honey acquired from each producer, giving the name and address of each producer; the assessments collected during the reporting period; the quantity of honey processed for sale from a producer-packer's own production; and a record of each transaction for honey on which assessments had already been paid, including a statement from the seller that the assessment had been paid.
- (c) For importers: the total quantity of honey and honey products imported during the reporting period and a record of each importation of honey or honey products during such period, giving the quantity, date, country of origin, and port of entry.
- (d) For persons who have an exemption from assessments under §1240.42(a) and (b), such information as deemed necessary by the Board, and approved by the Secretary, concerning the exemption including disposition of exempted honey.

[66 FR 21834, May 1, 2001]

### **§ 1240.51 Books and records.**

Each handler, importer, producer, producer-packer, or any person who is exempt from assessments under this subpart 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 such inspections. Such books and records shall be maintained for two years beyond the fiscal period of their applicability.

[66 FR 21834, May 1, 2001]

### **§ 1240.52 Confidential treatment.**

All information obtained from the books, records, or reports required to be maintained under §§1240.50 and 1240.51 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 to the public and then only in a suit 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: Except that nothing in this subpart shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers or importers subject to this subpart, if such statements do not identify the information furnished by any person;

(b) The publication by direction of the Secretary of the name of any person convicted of violating this subpart, together with a statement of the particular provisions of this subpart violated by such person.

[66 FR 21834, May 1, 2001]

### **Miscellaneous**

#### **§ 1240.60 Influencing governmental action.**

No funds collected by the Board under this order shall in any manner be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided for in this subpart.

#### **§ 1240.61 Right of the Secretary.**

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

[66 FR 21834, May 1, 2001]

#### **§ 1240.62 Suspension or termination.**

(a) The Secretary shall, whenever the Secretary finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this subpart or such provisions thereof.

(b) Except as otherwise provided in paragraph (c) of this section, five years from the date the Secretary issues an order authorizing the collection of assessments on honey under provisions of this subpart, and every five years thereafter, the Secretary shall conduct a referendum to determine if honey producers and importers favor the termination or suspension of this subpart.

(c) The Secretary shall hold a referendum on the request of the Board, or when petitioned by 10 percent or more of the honey producers and importers subject to assessment under this subpart to determine if the honey producers and importers favor termination or suspension of this subpart. A referendum under this paragraph may not be held more than once every two (2) years. If the Secretary determines, through a referendum conducted pursuant to this paragraph, that continuation of this subpart is approved, any referendum otherwise required to be conducted under paragraph (b) of this section shall not be held less than five (5) years after the date the referendum was conducted under this paragraph.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37457, Aug. 7, 1991; 66 FR 21834, May 1, 2001]

**§ 1240.63 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 §1240.38;

(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.

**§ 1240.64 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued thereunder, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

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

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

**§ 1240.65 Personal liability.**

No member, alternate member, or employee 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, or employee, except for acts of dishonesty or willful misconduct.

**§ 1240.66 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.

**§ 1240.67 Patents, copyrights, inventions, product formulations, and publications.**

Except for a reasonable royalty paid by the Board to the inventor of a patented invention, any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the Honey Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall inure to the benefit of the Board and shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board.

[56 FR 37457, Aug. 7, 1991]

**Subpart B—General Rules and Regulations**

**Source:** 52 FR 3103, Feb. 2, 1987, unless otherwise noted.



**§ 1240.100 Terms defined.**

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart—Honey Research, Promotion, and Consumer Information Order. Additional terms are defined in §1240.105.

**§ 1240.105 Definitions.**

(a) *Principal ingredient* means fifty-one percent or more by weight of the total ingredients contained in honey products.

(b) *First handler* means the person who first handles honey.

(c) *Order* means the Honey Research, Promotion, and Consumer Information Order which appears in this part.

(d) *United States* means the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

**§ 1240.106 Communications.**

Communications in connection with the Order and all rules, regulations, and supplemental Orders issued thereunder shall be addressed to the National Honey Board, 421 21st Street, Longmont, Colorado 80501–1421.

[56 FR 37458, Aug. 7, 1991]

**§ 1240.107 Policy and objective.**

(a) It shall be the policy of the Board to carry out an effective and continuous coordinated program of marketing research, development, advertising, and promotion in order to help maintain and expand existing domestic and foreign markets for honey and to develop new or improved markets.

(b) It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the honey industry and no undue preference shall be given to any of the various industry segments.

**§ 1240.108 Contracts.**

The Board, with the approval of the Secretary, may enter into contracts or make agreements with persons for the development and submission to it of plans or projects authorized by the Order and for carrying out of such plans or projects. Contractors shall agree to comply with the provisions of this part. Subcontractors who enter into contracts or agreements with a primary contractor and who receive or otherwise utilize funds

allocated by the Board shall be subject to the provisions of this part. All records of contractors and subcontractors applicable to contracts entered into by the Board are subject to audit by the Secretary.

**§ 1240.109 Procedure.**

The Organization of the Board and the procedure for conducting meetings of the Board shall be in accordance with the By-Laws of the Board.

**§ 1240.110 U.S. Department of Agriculture costs.**

The Board shall reimburse the U.S. Department of Agriculture (USDA) from assessments for administrative costs incurred by USDA with respect to the Order after its promulgation and for any administrative expenses incurred by USDA for the conduct of referenda. The Board shall pay those administrative costs incurred by USDA for the conduct of its duties under the Order as determined periodically by the Secretary. USDA will bill the Board quarterly and payment shall be due promptly after the billing of such costs.

**§ 1240.111 First handler and producer-packer.**

Persons who are first handlers or producer-packers include but are not limited to the following:

- (a) When a producer delivers honey from his or her 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 he or she handles the honey for his or her own account or for the account of the producer or the account of other persons.
- (b) When a producer delivers 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 honey to a commercial storage facility for the purpose of holding such honey under his or her 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 packages and sells honey of his or her own production at a roadside stand or other facility to consumers or sells to wholesale or retail outlets or other buyers, the producer is a producer-packer.
- (e) When a producer sells unprocessed or processed honey from his or her own production directly to a commercial user or food processor who utilizes such honey as an ingredient in the manufacture of formulated products, the producer is a producer-packer.

(f) When a producer uses honey from his or her own production in the manufacture of formulated products for his or her own account and for the account of others, the producer is the producer-packer.

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

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

(i) When a producer uses honey from his or her own production for feeding his or her own bees, such honey is not handled at that time. 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 the honey for feeding bees is the first handler.

#### **§ 1240.113 Importer.**

Each lot of honey and honey products imported into the United States is subject to assessment under this part. Such assessment shall be paid by the importer of such honey and honey products at the time of entry or withdrawal for consumption into the United States. Any person who imports honey or honey products into the United States as principal, agent, broker, or consignee for honey produced outside the United States and imported into the United States shall be the importer.

#### **§ 1240.114 Exemption procedures.**

(a) Producers who produce, producer-packers who produce and handle, and importers who import honey and who wish to claim an exemption from assessments pursuant to §§1240.42 (a) and (b) should submit an application to the Board for a certificate of exemption.

(b) Upon receipt of the claim for exemption, the Board shall investigate, to the extent practicable, the request for exemption. The Board will then issue, if deemed appropriate, an exemption certificate to each person who is eligible to receive one.

(c) The Secretary, upon recommendation by the Board, may exempt that portion of assessments collected under a qualified State plan; *Provided*, That the State plan meets all of the requirements in §1240.42(d) of the Order.

(1) First handlers collecting assessments from producers for the State plan and the Board shall forward that portion of assessments collected under the order in excess of the State assessment to the Board.

(2) Upon request of the Board, producers having an exemption from a portion of the assessments under this Order due to payment of assessments under a State plan, shall be required to furnish evidence to the Board that the assessments to the State have been paid.

[52 FR 3103, Feb. 2, 1987, as amended at 56 FR 37458, Aug. 7, 1991; 59 FR 22493, May 2, 1994]

**§ 1240.115 Levy of assessments.**

(a) *Time of payment.* The assessment shall become due at the time assessable honey is first handled or entered or withdrawn for consumption into the United States pursuant to this part.

(b) An assessment of one cent per pound is levied on honey produced in the United States, on imported honey entered or withdrawn for consumption into the United States, and on honey used in imported honey products entered or withdrawn for consumption into the United States except that assessments shall not be levied on the following:

(1) Any persons other than importers holding a valid exemption certificate during the twelve month period ending on December 31;

(2) That portion of honey which does not enter the current of commerce which is utilized solely to sustain a producers or producer-packer's own colonies of bees;

(3) That portion of otherwise assessable honey which is contained in imported products wherein honey is not a principal ingredient. Honey subject to assessment shall be assessed only once.

(c) The assessment on each lot of honey handled in the United States shall be paid by the first handler who handles, or by the producer-packer who produces and handles such honey.

(1) 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.

(2) A producer-packer shall pay, or collect and pay, assessments to the Board unless—

(i) Such producer-packer has obtained an exemption from the Board applicable to the honey which that producer-packer produced or produced and handled; or

(ii) Has received documentation acceptable to the Board that the assessment has been previously paid.

(d) Assessments shall be levied with respect to honey pledged as collateral for a loan or loan deficiency payment under the Commodity Credit Corporation (CCC) Honey Price

Support Program in accordance with an agreement entered into between the Honey Board and the CCC. The assessment will be deducted from the proceeds of the loan or loan deficiency payment by the CCC and forwarded to the Board, except that the assessment shall not be deducted in the case of a honey marketing cooperative that has already deducted the assessment or that portion of the assessment paid to a qualified State plan exempted by the Board. The Secretary, through the CCC, shall provide for the producer to receive a statement of the amount of the assessment deducted from the loan funds or loan deficiency payment promptly after each occasion when an assessment is deducted from any such loan funds or payment under this subsection.

(e) The U.S. Customs Service (USCS) will collect assessments on all honey or honey products where honey is the principal ingredient imported under its tariff schedule (HTS heading numbers 0409.00.00 and 2106.90.9988) at the time of entry or withdrawal for consumption and forward such assessment as per the agreement between the USCS and USDA. Any importer or agent who is exempt from payment of assessments pursuant to §1240.42 (a) and (b) of the Order may apply to the Board for reimbursement of such assessment paid.

(f) A late payment charge shall be imposed on any handler, producer-packer, or importer except as otherwise authorized by the Board, who fails to pay to the Board within the time prescribed in this subpart the total amount of assessment due for which any such handler, importer, or producer-packer is liable. Fifteen days after the assessment becomes due a one-time late payment charge of 10 percent will be added to any outstanding funds due the Board.

(g) In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance except as otherwise authorized by the Board, will be added to any accounts delinquent over 30 days and will continue monthly until the outstanding balance is paid to the Board.

[52 FR 3103, Feb. 2, 1987, as amended at 53 FR 37731, Sept. 28, 1988; 56 FR 37458, Aug. 7, 1991; 61 FR 29462, June 11, 1996; 61 FR 38356, July 24, 1996]

#### **§ 1240.116 Payment of assessments.**

(a) Responsibility for payment. Unless otherwise authorized by the Board under the Act and Order, the first handler or producer-packer 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 or producer-packer 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. Failure of the handler or producer-packer to collect or deduct such assessment does not relieve the handler or producer-packer of his or her obligation to remit the assessment to the Board. However, should a first handler or the Secretary fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board. Assessments on imported

honey and honey products shall be collected as specified in §1240.115(e); *Provided*, That importers shall be responsible for payment of any assessment amount not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States.

(b) *Payment directly to the Board.* Except as provided in paragraph (c) of this section, each first handler and producer-packer shall pay the required assessment pursuant to §1240.41 of the Order directly to the Board at the address referenced in §1240.106, for each reporting period specified in §1240.119, on or before the 15th day following the end of such period. Payment shall be in the form of a check, draft, or money order payable to the Board and shall be accompanied by a report on Board forms pursuant to §1240.50.

(c) *Prepayment of assessment.* (1) In lieu of the monthly assessment payment specified in §1240.119 of this subpart, the Board may permit first handlers or producer-packers to make advance payments of their total estimated assessments for the season to the Board prior to their actual determination of assessable honey.

(2) Persons using such procedure shall provide a monthly accounting of actual handling and assessments.

(3) Specific requirements, instructions, and forms for making such advance payments shall be provided by the Board upon request.

(d) *Payment through cooperating agency.* The Board may enter into agreements subject to approval of the Secretary authorizing other organizations to collect assessments in its behalf. All such agreements are subject to the requirements of the Act, Order, and all applicable rules and regulations under the Act and the Order.

[52 FR 3103, Feb. 2, 1987, as amended at 56 FR 37458, Aug. 7, 1991]

#### **§ 1240.118 Reports of disposition of exempted honey.**

The Board may require reports by first handlers, producer-packers, importers, or any persons who receive an exemption from assessments under §1240.42 (a) and (b) on the handling and disposition of exempted honey. Also, authorized employees of the Board or the Secretary may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

[56 FR 37458, Aug. 7, 1991]

#### **§ 1240.119 Reporting period and reports.**

(a) For the purpose of the payment of assessments, a calendar month shall be considered the reporting period; however, other accounting periods may be used when registered with and approved by the Board in writing.

(b) Pursuant to §1240.50 of the Order, handlers and producer-packers shall file with the Board a report for each reporting period.

(1) All reports shall contain at least the following information:

(i) The handler's or producer-packer's name and address;

(ii) Date of report (which is also date of payment to the Board);

(iii) Period covered by report; and

(iv) Total quantity of honey determined as assessable during the reporting period.

(2) Handlers or producer-packers 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 to total assessable quantities handled for each such producer.

(c) Each importer shall file with the Board a monthly report containing at least the following information:

(1) The importer's name and address.

(2) The quantity of honey and honey products entered or withdrawn for consumption into the United States.

(3) The amount of assessment paid on honey and honey products entered or withdrawn for consumption into the United States to the U.S. Customs Service at the time of entry or withdrawal for consumption.

(4) The amount of any honey and honey products on which the assessment was not paid to the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States.

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

#### **§ 1240.120 Retention period for records.**

Each first handler, producer-packer, importer, or any person who receives an exemption from assessments under §§1240.42 (a) and (b) required to make reports pursuant to this subpart shall maintain and retain for at least two years beyond the marketing year of their applicability: One copy of each report made to the Board, records of all exempt producers, producer-packers, and importers including certification of exemption as

necessary to verify the address of such exempt person and such records as are necessary to verify such reports.

[56 FR 37458, Aug. 7, 1991]

**§ 1240.121 Availability of records.**

Each first handler, producer-packer, importer, or any person who receives an exemption from assessments under §§1240.42 (a) and (b) and is required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

[56 FR 37458, Aug. 7, 1991]

**§ 1240.122 Confidential books, records, and reports.**

All information obtained from the books, records, and reports of handlers, producer-packers, importers or any persons who receive an exemption from assessments under §1240.42 (a) and (b) and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential in the manner and to the extent provided for in §1240.52 of the Order.

[56 FR 37458, Aug. 7, 1991]

**§ 1240.123 Right of the Secretary.**

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

**§ 1240.124 Personal liability.**

No member 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, or employee except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

**§ 1240.125 OMB control numbers.**

The control numbers assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511, are as follows: OMB Number 0581-0093, except Board member nominee information sheets which are assigned OMB Number 0505-0001.



[56 FR 37458, Aug. 7, 1991]

### **Subpart C—Referendum Procedures**

**Source:** 65 FR 48321, Aug. 7, 2000, unless otherwise noted.

#### **§ 1240.200 General.**

Referenda to determine whether eligible producers, importers, and, in the case of an order assessing handlers, handlers favor the continuation, suspension, termination, or amendment of the Honey Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

#### **§ 1240.201 Definitions.**

(a) *Act* means the Honey Research, Promotion, and Consumer Information Act (Pub. L. 98–590; 98 Stat. 3115; enacted October 30, 1984; 7 U.S.C. 4601–4613, as amended) and any amendments thereto.

(b) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(c) *Board* or *National Honey Board* means the Honey Board, the administrative body provided for under section 7(c) of the Act and established under §1240.30.

(d) *Department* means the United States Department of Agriculture.

(e) *Eligible handler* means any person defined as a handler or producer-packer in the Order, or importer in this subpart, who handles domestic honey or honey products, and is covered by an order and subject to assessment on domestic honey handled during the representative period.

(f) *Eligible importer* means any person defined as an importer in this subpart, who is engaged in the importation of honey or honey products, and is subject to pay assessments to the Board on honey or honey products imported during the representative period.

(g) *Eligible producer* means any person defined as a producer or producer-packer in the Order who produces honey and is subject to pay assessments to the Board on such honey produced during the representative period and who:

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

(2) Rents honey bee colonies or beekeeping equipment resulting in the ownership of all or a portion of the honey produced;

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

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

(h) *Importer* means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey or honey products outside of the United States for sale in the United States, and who is listed as the importer of record for such honey or honey products.

(i) *Order* means the Honey Research, Promotion, and Consumer Information Order.

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

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

(2) So-called *joint ventures* wherein one or more parties to 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, handling, or importation of honey or honey products for market and the authority to transfer title to the honey or honey products so produced, handled or imported.

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

(l) *Representative period* means the period designated by the Secretary pursuant to the Act.

(m) *Secretary* means the Secretary of Agriculture of the United States, 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.

## **§ 1240.202 Voting.**

(a) *Eligibility.* (1) Each person who is, as defined in this subpart, an eligible producer; an eligible importer; or, in the case of an order assessing handlers, an eligible handler shall be entitled to vote in the referendum.

(2) In conducting a referendum for the sole purpose of determining whether persons favor the implementation of amendments to the Order in accordance with changes to the Act made by the Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105–185, enacted June 23, 1998), producer-packers, importers, and handlers shall be allowed to vote as if:

(i) The proposed amendments to the Order were in place during the representative period; and

(ii) They were subject to assessment based on the quantity of honey or honey products handled during the representative period.

(b) *Number of ballots cast.* (1) Each person who is an eligible producer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast one ballot in the referendum: *Provided*, That each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey and/or honey products, in which more than one of the parties is a producer, shall be entitled to cast one ballot covering only such producer's share of the ownership.

(2) In the case of an order assessing handlers, each person who is an eligible handler, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast one ballot in the referendum.

(3) Each person who is a producer-packer, as defined in the Order, at the time of the referendum and during the representative period, shall be entitled to cast one ballot as an eligible producer and, in the case of an order assessing handlers, one ballot as an eligible handler.

(4) Each importer, as defined in the Order, at the time of the referendum and during the representative period, shall be entitled to cast in the referendum one ballot as an importer and, in the case of an order assessing handlers, one ballot as an eligible handler.

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

(d) *Casting of ballots.* All ballots are to be cast by mail as instructed by the Secretary.

#### **§ 1240.203 Instructions.**

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

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

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

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter; and

(2) The quantity of honey or honey products produced, imported, and, in the case of an order assessing handlers, handled.

(c) Give reasonable public notice of the referendum:

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

(2) By such other means as said agent may deem advisable.

(d) Mail to eligible producers, importers, and in the case of an order assessing handlers, handlers whose names and addresses are known to the referendum agent the instructions on voting; a ballot; and a summary of the terms and conditions to be voted upon. No person who claims to be eligible to vote shall be refused a ballot.

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

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

#### **§ 1240.204 Subagents.**

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

#### **§ 1240.205 Ballots.**

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

**§ 1240.206 Referendum report.**

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

**§ 1240.207 Confidential information.**

All ballots cast and their contents and all other information or reports furnished to, compiled by, or in possession of, the referendum agent or subagents that reveal, or tend to reveal, the identity or vote of any producer, handler, or importer of honey or honey products shall be held strictly confidential and shall not be disclosed.

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