

Unit	Number of members
Western Region (Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska) .....	1

\* \* \* \* \*

Dated: May 9, 2000.

**Barry L. Carpenter,**

*Deputy Administrator, Livestock and Seed Program.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1240

[FV-00-702 PR]

#### **Honey Research, Promotion, and Consumer Information Order; Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order**

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The purpose of this proposed rule is to amend the procedures which the U.S. Department of Agriculture (USDA or the Department) would use in conducting a referendum to determine whether honey producers, producer-packers, importers, and handlers subject to the Honey Research, Promotion, and Consumer Information Act (Act) favor implementation of changes to the Honey Research, Promotion, and Consumer Information Order (Order) based on the 1998 amendments to the Act. These procedures, as amended, would also be used in any subsequent referenda under the Act.

**DATES:** Comments must be received by June 14, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments concerning the proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535 South Building, Washington, DC 20250-0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours, or on the

internet at [www.ams.usda.gov/fv/rpdocketlist.htm](http://www.ams.usda.gov/fv/rpdocketlist.htm). Comments may also be submitted electronically to: [malinda.farmer@usda.gov](mailto:malinda.farmer@usda.gov). All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at the above internet address. Pursuant to the Paperwork Reduction Act of 1995 (PRA), also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

#### **FOR FURTHER INFORMATION CONTACT:**

Karen T. Comfort, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535 South Building, Washington, DC 20250-0244; telephone (202) 720-9915; facsimile (202) 205-2800.

**SUPPLEMENTARY INFORMATION:** The Honey Research, Promotion, and Consumer Information Act (Act) (Pub. L. 98-590; enacted October 30, 1984; 7 U.S.C. 4601-4613, as amended) was amended by Congress on June 23, 1998. The amendments to the Act were made by the Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105-185, enacted June 23, 1998).

A proposed rule on amending the Honey Research, Promotion, and Consumer Information Order (Order) (7 CFR Part 1240) in conformance with the 1998 amendments to the Act was published in the **Federal Register** on February 28, 2000 (65 FR 10600). Before the amendments to the Order can be implemented, a referendum must be conducted among producers, producer-packers, importers, and handlers as provided in section 4613(d) of the Act.

#### **Question and Answer Overview**

*Why Are Rules Being Proposed for a Referendum on the Amendments to the Honey Research, Promotion, and Consumer Information Order?*

On June 23, 1998, the Act was amended by the Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105-185, enacted June 23, 1998). The amendments to the Act authorize amendments to the Order. Before the Order can be amended, producers, producer-packers, handlers,

and importers must be allowed to vote in a national referendum on whether they wish the amendments to become effective. This proposed rule would amend existing referendum procedures to allow handlers to vote in the referendum and make other changes related to the amendments to the Act. Under the current referendum procedures, only producers, producer-packers in their capacity as producers, and importers are eligible to vote. Publishing this proposed rule provides the opportunity for public input on the revised procedures before they are implemented.

#### *How Long Do I Have To Comment on the Proposed Rule?*

You have 30 days to comment on this proposed rule. Your written comments must be received by June 14, 2000. You can mail, fax, or e-mail your comments. Additionally, you have 60 days to provide written comments to OMB on the paperwork burden associated with this proposal. Those comments must be received by July 14, 2000.

#### *Who Is Eligible To Vote in the Referendum?*

Most honey producers, producer-packers, importers, and handlers who produced, handled, or imported honey or honey products during calendar years 1998 and 1999 would be eligible to vote in the referendum. However, certain producers, producer-packers, handlers, and importers would not be eligible to vote. If you produced, produced and handled, or imported less than 6,000 pounds of honey or honey products per year and you distributed that honey directly through local retail outlets such as roadside stands, farmers markets, or groceries, you would be ineligible to vote in the referendum unless you voluntarily paid assessments.

#### *How Will the Vote in the Referendum Be Tabulated?*

In order for the amendments to become effective, they must be approved by a majority of the voters in the referendum and those voters must represent 50 percent or more of the honey produced, handled, and imported by the voters in the referendum.

#### *If I Am a Producer, How Will My Vote Be Counted?*

If you are a producer, you will be entitled to one vote which includes the number of pounds of honey you produced in 1998 and 1999.

*If I Am a Producer-Packer, How Will My Vote Be Counted?*

One of the proposed amendments to the Order would implement a new assessments on handlers. Therefore, as a producer-packer, you would be entitled to one vote as a producer and one vote as a handler. Each vote would include the number of pounds of honey you produced or handled during 1998 and 1999.

*If I Am a Handler, How Will My Vote Be Counted?*

Since handlers were not covered under the program during 1998 and 1999, you would be entitled to one vote as a handler based on the number of pounds of honey you handled during 1998 and 1999, even though you did not pay assessments during 1998 and 1999.

*If I Am an Importer, How Will My Vote Be Counted?*

Under the proposed amendments, half of an importer's assessment would be considered the producer portion of the assessment and half of an importer's assessment would be considered the handler portion of the assessment. Therefore, importers would be entitled to cast two ballots, one for the handler portion of the assessment and one for the producer portion of the assessment. Each ballot would include the number of pounds of honey or honey products you imported during 1998 and 1999.

*When Will the Referendum Be Held?*

After we have analyzed the comments on this rule and the comments on the proposed rule on the amendments to the Order, we will issue final referendum rules and a second proposed rule on amendments to the Order. The second proposed rule on amendments to the Order will include a Referendum Order, which will announce the voting period for the referendum. The voting period will last 30 days and be announced 30 days in advance.

*How Can I Vote in the Referendum?*

Voting will take place by mail. All known eligible producers, producer-packers, importers, and handlers will receive a ballot and voting instructions in the mail from USDA. Producers, producer-packers, importers, and handlers who believe they are eligible to vote and who do not receive a ballot in the mail may request a ballot by calling a toll-free telephone number. The ballot must be received by USDA by close of business on the last day of the voting period.

*How Will USDA Make Certain That Only Eligible Persons Vote in the Referendum?*

USDA will use records from the National Honey Board on persons who have paid assessments or requested an exemption from assessments.

*How Will USDA Make Certain That Every Eligible Person has the Opportunity to Vote?*

USDA will have a toll-free telephone number for persons to call to request a ballot if they do not receive a ballot and they believe they are eligible to vote. These persons will be required to provide documentation of their eligibility to vote. Executive Orders 12866 and 12988 and the Regulatory Flexibility Act.

This proposed 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 (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

Under Section 10 of the Act, a person subject to the Order may file, within a period prescribed by the Secretary of Agriculture (Secretary), a written petition with the Secretary stating that the Order, or any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and request a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed not later than two years after: (1) The effective date of the Order, provision, or obligation challenged in the petition; or (2) the date on which the petitioner became subject to the Order, provision, or obligation challenged in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on a petition, which will be final if the petition is in accordance with the law.

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

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency is required to examine the impact of this 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 will not be disproportionately burdened.

There are approximately 3,285 producers, 400 producer-packers, and 348 importers who pay assessments under the Order. In addition, there are 121 handlers who would be subject to assessments if the amendments to the Order are implemented. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5 million and small agricultural producers are defined as those having annual receipts of not more than \$500,000. The majority of honey producers, producer-packers, importers, and handlers may be classified as small entities.

This proposed rule would amend the procedures for the conduct of referenda (7 CFR 1240.200–1240.207) under the Order in accordance with 1998 changes to sections 4611 and 4613 of the Act. The procedures, as amended, would be used in conducting a referendum among producers, producer-packers, importers, and handlers to determine whether they favor implementation of the proposed amendments to the Order which are subject to prior approval in a referendum. The authority to conduct this referendum is provided in section 4613 of the Act, as amended. Other amendments to the Order based on the 1998 changes to the Act are not subject to referendum approval and will become part of the Order regardless of the outcome of the referendum. The procedures contained in this proposal would also be used for any subsequent referenda involving the continuation, suspension, termination, or amendment of the Order.

Section 4611(b) of the Act provides that those changes to the Order subject to a referendum vote must be approved by a majority of eligible voters who vote. The majority voting in the affirmative must also represent a majority of the quantity of honey and honey products produced, imported, and handled among all those voting. Section 4613(d)(1)(B) also directs that no individual provision of the proposed amendments to the Order shall be subject to a separate vote in the referendum.

Under section 4613(d)(2) of the Act, producers, producer-packers, importers, and handlers owing assessments on honey produced, or honey or honey

products imported or handled during the 2-calendar-year period preceding the referendum, which period shall be considered to be the representative period, would be eligible to vote.

Although currently not subject to assessment, those persons who handled honey or honey products during the representative period would also be able to participate in the referendum since one of the proposed changes would assess handlers for the first time. Section 4613(d)(3)(A) of the Act directs that producer-packers, importers, and handlers will be allowed to vote as if the proposed amendments to the Order had been in place during the representative period, and they would have owed assessments as provided by the proposed amendments to the Order.

Each producer and producer-packer owing assessments as producers on honey produced during the representative period will be entitled to cast one ballot in the referendum as a producer. Each importer will be entitled to cast two ballots, one ballot for the producer portion of the importer assessment and one ballot for the handler portion of the importer assessment. Each handler will also be entitled to cast one ballot in the referendum if the handler would have been subject to assessment on honey or honey products handled during the representative period had the proposed amendments to the Order been in effect. Each producer-packer will be entitled to cast an additional ballot as a handler if they handled honey or honey products during the representative period and would have owed assessments as provided by the proposed amendments to the Order.

The amount of honey linked to a person's vote as an eligible producer shall be the quantity of honey produced during the representative period. The quantity of honey or honey products attributable to a person's vote as an importer shall be the amount of honey or honey products imported during the representative period. The quantity of honey attributable to a person's vote as a handler shall be the amount of honey or honey products handled during the representative period.

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

Voting in the referendum is optional. However, if producers, producer-packers, handlers, and importers choose

to vote, the burden of casting a ballot would be offset by the benefits of having the opportunity to vote on whether they wish to have the Order amended.

The information collection requirements contained in this proposed rule (as described below) are designed to minimize the burden on producers, producer-packers, importers, and handlers voting in referenda.

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

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

USDA's Agricultural Marketing Service has performed this initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. However, in order to have additional data that may be helpful in evaluating the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule and information on the expected benefits and costs.

#### **Paperwork Reduction Act**

In accordance with the Office of Management and Budget (OMB) regulation (5 CFR part 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot represents the information collection and recordkeeping requirements that may be imposed by this rule.

Approximately 3,285 producers and 400 producer-packers would be eligible to vote as producers, and 348 importers of record would be eligible to vote as importers. In addition, approximately 121 handlers, 400 producer-packers, and 20 importers of record who would be eligible to vote as handlers.

The basic referendum ballot has been previously approved by OMB. However, the ballot would be modified slightly to allow handlers to vote for the first time. The revised referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

The information collection burden associated with producers, producer-

packers, and importers is already reflected in the information collection approved for use under OMB Number 0581-0093.

This proposed rule would add a new burden involving those eligible to vote as handlers. The following persons will be eligible to vote as handlers in the referendum: (1) Persons who handle honey or honey products without producing or importing honey or honey products that would have owed assessments as provided by the proposed amendments to the Order; (2) persons who both produce and handle honey or honey products (*i.e.*, producer-packers) that would have owed assessments as provided by the proposed amendments to the Order; and (3) persons who handle honey or honey products and also are importers of record (*i.e.*, handler-importers) that would have owed assessments as provided by the proposed amendments to the Order. If the proposed amendments to the Order are approved, handlers will also be able to vote in subsequent referenda.

*Title:* National Research, Promotion, and Consumer Information Programs.

*OMB Number:* 0581-0093.

*Expiration Date of Approval:* November 30, 2000.

*Type of Request:* Revision of a currently approved information collection for advisory committees and boards and for research and promotion programs.

*Abstract:* The information collection requirements in this request are essential to carry out the intent of the Act. The increase in burden associated with the ballot is as follows:

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

*Respondents:* Handlers, producer-packers, and importers voting as eligible handlers.

*Estimated Number of Respondents:* 550.

*Estimated Number of Responses per Respondent:* 1 every 5 years (0.2).

*Estimated Total Annual Burden on Respondents:* 28 hours (328 hours (requested)—300 hours (currently approved) = 28 hours (increase)).

The estimated additional annual cost of providing the information by 550 persons eligible to vote as handlers (based on approximately 121 handlers, 400 producer-packers, and 20 importers who are also handlers) would be \$275.00 or \$0.50 per voter. The increase of 28 total burden hours would be added to the previous burden total of 300 hours under OMB No. 0581-0093.

Comments are invited on: (a) Whether the proposed additional collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed increase in the collection of information, including the validity of the methodology and assumption used; 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. 0581-0093, the docket number, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the USDA Docket Clerk and OMB Desk Officer for Agriculture at the addresses and within the time frames specified above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the increase in 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.

### Background

On June 23, 1998, the Act was amended by the Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105-185, enacted June 23, 1998). The 1998 amendments to section 4613 of the Act authorize the Secretary to make conforming changes to the Order after conducting a referendum among producers, producer-packers, handlers, and importers.

The following amendments to the Order must be approved by the voters in a referendum before becoming effective: (1) A requirement for the Board to reserve 8 percent of its funds annually for beekeeping and production research; (2) authority for the Board to develop recommendations for purity standards and an inspection and monitoring system in order to enhance the image of honey and honey products; (3) the addition of two handler members who are also importers to the Board; (4) a decrease in the producer assessment from 1 cent per pound to 0.75 cents per

pound; (5) the addition of an assessment of 0.75 cents per pound on handlers; and (6) an increase in the assessment rate on imports from 1 cent per pound to 1.5 cents per pound.

Other proposed amendments to the Order are not subject to voter approval in a referendum and would be added to the Order regardless of the outcome of the referendum. These amendments include: (1) Changing the two importer/exporter positions to two importer positions on the Board; (2) eliminating the public member position; (3) revising nomination and eligibility requirements; (4) requiring that at least 50 percent of the Board members be honey producers; (5) providing authority for the Board to develop a voluntary quality assurance program with enforcement by USDA; (6) eliminating the requirement to file for an exemption under the program; and (7) removing obsolete language.

If the proposed amendments to the Order regarding assessments on handlers are approved, handlers would vote in subsequent referenda. If the proposed amendments to the Order regarding assessments on handlers are not approved in the referendum, handlers would not vote in future referenda.

Following the 1998 amendments to the Act, USDA issued a news release on July 31, 1998, inviting persons to submit proposals for implementing the amendments by September 30, 1998. Subsequently, on September 21, 1998, USDA extended the deadline to December 31, 1998, to provide the various segments of the honey industry ample opportunity to develop proposals. One proposal and eight comments were received. A complete proposal was submitted by the Board.

The proposed changes to referenda procedures would provide handlers, if subject to assessment under an order, the opportunity to vote in a referendum along with eligible producers, producer-packers, and importers. In addition, producers-packers would be entitled to cast an additional ballot as handlers if they handled honey or honey products during the representative period and would have owed assessments as provided by the proposed amendments to the Order. Importers would cast two ballots, one ballot for the producer portion of the importer assessment and one ballot for the handler portion of the importer assessment. Under the current referenda procedures, only producers, producer-packers in their capacity as producers, and importers are eligible to vote.

The amended referendum procedures in this proposed rule would replace Subpart—Procedure for the Conduct of

Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order (7 CFR 1240.200–1240.207). The revised subpart, to be redesignated as subpart C, would include sections covering definitions, voting, instructions, subagents, ballots, referendum report, and confidential information. While the definitions for producer, producer-packer, and handler in the existing Order would not change as a result of the February 28, 2000, proposed rule on the Order, the definition of importer would change. Therefore, the same proposed definition of importer would be added to these regulations.

In addition, this rule would redesignate Subpart—General Rules and Regulations (7 CFR 1240.100–1240.125) as subpart B.

All written comments received in response to this proposal by the date specified will be considered prior to finalizing this action. The industry is asked to pay particular attention to the definitions to be sure that they are appropriate for purposes of determining voter eligibility. The industry is also encouraged to comment on any other practical considerations with regard to conducting the referendum within the parameters set forth in this proposed rule and the Act, as amended.

The proposed amendments to the Order, which have been published separately and which would be the subject of the referendum conducted under these proposed procedures, have not received the approval of the Secretary.

### List of Subjects in 7 CFR Part 1240

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

For the reasons set forth in the preamble, it is proposed that part 1240 of Title 7, Chapter XI of the Code of Federal Regulations, be amended as follows:

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

1. Revise the authority citation for 7 CFR part 1240 to read as follows:

**Authority:** 7 U.S.C. 4601–4613 and 7 U.S.C. 7401.

2. In part 1240, the heading for subpart B is revised to read “Subpart B—Rules and Regulations”.

3. Revise subpart C to read as follows:

**Subpart C—Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order**

Sec.

- 1240.200 General.
- 1240.201 Definitions.
- 1240.202 Voting.
- 1240.203 Instructions.
- 1240.204 Subagents.
- 1240.205 Ballots.
- 1240.206 Referendum report.
- 1240.207 Confidential information.

**Subpart C—Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order**

**§ 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 this part, or importer in this subpart, who handles honey or honey products, and is covered by an order and subject to assessment on 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, 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.

Dated: May 9, 2000.

**Eric M. Forman,**

*Deputy Administrator, Fruit and Vegetable Programs.*

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## **DEPARTMENT OF ENERGY**

### **Office of Energy Efficiency and Renewable Energy**

#### **10 CFR Part 431**

[Docket No. EE-RM/STD-00-100]

RIN 1904-AB06

### **Energy Efficiency Program for Commercial and Industrial Equipment: Efficiency Standards for Commercial Heating, Air Conditioning and Water Heating Equipment**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of document availability and public workshop.

**SUMMARY:** The Energy Policy and Conservation Act, as amended, establishes energy efficiency standards for certain commercial heating, air conditioning and water heating equipment and requires the Department (DOE, Department or we) to administer an energy conservation program for these products. On October 29, 1999, the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) and Illuminating Engineering Society of North America (IES) revised ASHRAE/IES Standard 90.1, which contains efficiency standards for these products. This notice announces availability of the report of the Screening Analysis the Department has undertaken to assess what action it should take with respect to the efficiency levels now contained in ASHRAE/IES Standard 90.1. The Department invites comments and is convening a public workshop on its preliminary conclusions, on the analysis, and on any additional considerations that might affect the Department's decisions on which standards to adopt or reject without further analysis, and which to consider further.

**DATES:** The Department must receive written comments on or before July 31, 2000. The Department requests ten (10) copies of the written comments and, if possible, an electronic copy (3½" diskette) in a form accessible to WordPerfect™ 8. Oral views, data and arguments may be presented at the public workshop to be held in Washington, DC, beginning at 9:30 a.m. on July 11, 2000.

The Department must receive (1) requests to speak at the workshop no later than 4:00 p.m., June 23, 2000, and (2) copies of statements to be given at the public workshop no later than 4:00