

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

[FV-00-702 FR]

Honey Research, Promotion, and Consumer Information Order; Revision of Subpart C— Referendum Procedures**ACTION:** Final rule.

SUMMARY: This rule revises the procedures which the U.S. Department of Agriculture (USDA or the Department) will 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. This rule revises the referendum procedures under the Order to allow handlers to vote on changes to the program. These procedures will also be used in future referenda on the program.

DATES: Effective September 6, 2000.**FOR FURTHER INFORMATION CONTACT:**

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SUPPLEMENTARY INFORMATION: The honey research and promotion program operates under the Honey Research, Promotion, and Consumer Information Order (Order) (7 CFR part 1240). The Order is authorized by the Honey Research, Promotion, and Consumer Information Act (Act) [Pub. L. 98-590, 7 U.S.C. 4601-4613]. The Act was amended on June 23, 1998, and requires the U.S. Department of Agriculture (USDA or the Department) to obtain public comments and conduct a national referendum on making similar amendments to the Order.

Prior documents. USDA published proposed referendum procedures in the **Federal Register** on May 15, 2000 (65 FR 30924) with a 60-day comment period. This final rule addresses the three comments that were received by the June 14, 2000, deadline.

In addition, a proposed rule on amending the Order was published in the **Federal Register** on February 28, 2000 (65 FR 10600) with a 60-day

comment period. USDA is publishing a second proposed rule on the amendments, which reflects the comments which were received, separately in this issue of the **Federal Register**.

Votable amendments. The votable amendments would: (1) Require the National Honey (Board) to reserve 8 percent of its funds annually for beekeeping and production research; (2) authorize 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) add two handler members who are also importers to the Board; (4) decrease the producer assessment from 1 cent per pound to 0.75 cents per pound; (5) add an assessment of 0.75 cents per pound on handlers; and (6) increase the assessment rate on imports from 1 cent per pound to 1.5 cents per pound.

Automatic amendments. The following amendments will be made to the Order regardless of the outcome of the referendum: (1) Changing the two importer/exporter positions on the Board to two importer positions; (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.

Question and Answer Overview*Why Are These Procedures Being Published?*

USDA is going to conduct a referendum on proposed amendments to the honey research and promotion program in September 2000, and revised procedures are needed to allow handlers to vote. The current procedures only allow producers, producer-packers, and importers to vote because they are the only ones who currently pay assessments to the National Honey Board (Board). One of the proposed amendments would require handlers to pay assessments to the Board for the first time. Therefore, the referendum rules are being changed to give handlers the opportunity to vote on whether they want to pay assessments. These procedures are being made public in advance of the referendum to help ensure that members of the honey industry know the eligibility criteria for voting and other pertinent information.

When Is the Referendum?

The voting period for the referendum will be from September 5 through 29, 2000. The Agricultural Marketing Service (AMS) will mail all known eligible voters a ballot, details on the proposed amendments, and voting instructions no later than August 28, 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 will 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 in 1998 and 1999.

How Many Voters Need To Approve the Amendments in Order for Them To Be Made?

In order for the votable 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 and handled and honey and honey products imported by the voters in the referendum.

If I am a Producer, How Will my Vote Be Counted?

If you are a producer, you are 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 will be entitled to one vote as a producer and one vote as a handler. Your producer vote will include the number of pounds of honey you produced during 1998 and 1999, and your handler vote will include the number of pounds of domestic honey you handled during 1998 and 1999.

If I am a Handler, How Will my Vote Be Counted?

You are entitled to one vote as a handler based on the number of pounds of domestic honey you handled during

1998 and 1999. If you also imported honey, you may cast a ballot as an importer on the honey and honey products on which you paid the import assessment in 1998 and 1999.

If I am an Importer, How Will my Vote Be Counted?

You are entitled to cast two ballots, one for the handler portion of your assessments and one for the importer portion of your assessment. Each ballot will include the number of pounds of honey and honey products you imported during 1998 and 1999.

Is a Cooperative Considered a Producer or a Handler for the Purposes of the Referendum?

A cooperative is considered a handler for the purposes of voting in the referendum. Individual producers who belong to cooperatives are entitled to cast a ballot for the domestic honey that they produce. A cooperative may cast a ballot covering the number of pounds of domestic honey handled by the cooperative in 1998 and 1999. If a cooperative is also an importer, the cooperative may also cast a ballot covering the foreign honey and honey products that the cooperative imported as importer of record in 1998 and 1999.

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 September 29, 2000.

How will USDA Make Certain That only Eligible Persons Vote in the Referendum?

USDA will use records from the Board concerning persons who have paid assessments or requested an exemption from assessments. In addition, there are penalties for providing false information to the federal government. By signing a ballot, a voter certifies that he or she is eligible to vote and that the information on the ballot is correct. A person who knowingly or willingly provides false information on the ballot is subject to a fine of up to \$10,000, imprisonment for up to five years, or both.

How will USDA Make Certain that Every Eligible Person has the Opportunity to Vote?

Persons may call 1-888-729-9917 (toll-free) 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

This rule has been determined to be "not significant" for purposes of Executive Order (E.O.) 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

In addition, this rule has been reviewed under E.O. 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act allows producers, producer-packers, importers, and handlers (if covered by the program) to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law. In the petition, the person may request a modification of the Order or an exemption from the Order. Petitions must be filed no 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. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Regulatory Flexibility Act and Paperwork Reduction Act

Final Regulatory Flexibility Analysis. In accordance with the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) has examined the impact of this rule on small entities.

There are approximately 2,885 producers, 400 producer-packers, and

348 importers who currently pay assessments under the Order. In addition, there are 121 handlers who would pay assessments if the votable 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.

Previously, there were approximately 3,633 eligible voters in referenda on the honey program (2,885 producers and 400 producer-packers casting producer ballots and 348 importers casting importer ballots). Under this rule, there will be an additional 869 potential voters (400 producer-packers, 348 importers, and 121 handlers casting handler ballots).

This rule amends the referendum procedures under the Order in accordance with the 1998 changes to sections 4611 and 4613 of the Act. The procedures, as amended, will initially be used to conduct a referendum among producers, producer-packers, importers, and handlers to determine whether they favor implementation of the votable amendments to the Order. The authority to conduct this referendum is provided in section 4613 of the Act, as amended. The automatic amendments will become part of the Order regardless of the outcome of the referendum. USDA will also use the revised procedures for any subsequent referenda involving the continuation, suspension, termination, or amendment of the Order.

Section 4611(b) of the Act provides that the votable amendments to the Order 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 during the two calendar years preceding the referendum (the representative period) are eligible to vote in the referendum. Since the referendum will be conducted in 2000, the representative period for this referendum will be calendar years

1998 and 1999. Handlers will be allowed to vote in this referendum because section 4613(d)(3)(A) of the Act directs that producer-packers, importers, and handlers will be allowed to vote as if the votable amendments to the Order had been in place during the representative period.

Each current producer who produced honey in 1998 and 1999 will be entitled to cast one ballot which includes the number of pounds of honey produced during 1998 and 1999.

Each producer-packer will be entitled to one vote as a producer and one vote as a handler. The producer vote will include the number of pounds of honey produced in 1998 and 1999. The handler vote will include the number of pounds of domestic honey handled in 1998 and 1999.

Each handler will be entitled to one vote based on the number of pounds of domestic honey handled during 1998 and 1999.

Each importer will be entitled to cast two ballots, one for the handler portion of the assessments and one for the importer portion of the assessments. Each ballot will include the number of pounds of honey and honey products imported during 1998 and 1999.

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 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 approve the votable amendments.

The information collection requirements related to this rule are described below and 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 will be more cost-effective and reliable. The Department will 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.

Paperwork Reduction Act. This rule will increase the information collection burden previously approved by OMB for the honey program referendum ballot by adding 869 additional potential voters (described above). As required by OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the revised referendum ballot was submitted to OMB and has been approved for use under OMB Number 0581-0093.

The estimated number of additional potential voters (respondents) indicated in the May 15, 2000, proposed rule has been increased from 550 to 869. This increase reflects a comment submitted by the Board which correctly pointed out that all 348 importers will be eligible to cast votes as handlers. Therefore, the estimated additional burden under the revised ballot has been revised as shown below.

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 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 and producer-packers and importers voting as handlers.

Estimated Number of Respondents: 869.

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

Estimated Total Annual Burden on Respondents: 43 hours [343 hours (requested) - 300 hours (currently approved) = 43 hours (increase)].

The estimated additional annual cost of providing the information by 869 persons eligible to vote as handlers would be \$430.00 or \$0.50 per voter. The increase of 43 total burden hours has been added to the previous burden total of 300 hours under OMB No. 0581-0093.

Background

As stated above, Congress amended the Act on June 23, 1998. The amendments to the Act authorize the Secretary to make related changes to the Order after conducting an industry-wide referendum on the votable amendments.

The votable amendments would: (1) Require the National Honey (Board) to reserve 8 percent of its funds annually for beekeeping and production research; (2) authorize 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) add two handler members who are also importers to the Board; (4) decrease the producer assessment from 1 cent per pound to 0.75 cents per pound; (5) add an assessment of 0.75 cents per pound on handlers; and (6) increase the assessment rate on imports from 1 cent per pound to 1.5 cents per pound.

The following amendments will automatically be made to the Order regardless of the outcome of the referendum: (1) Changing the two importer/exporter positions on the Board to two importer positions; (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.

This rule allows producer-packers, importers, and handlers to cast ballots as handlers in the referendum on the votable amendments to the Order and in future referenda, if the votable amendments are approved. Previously, only producers, producer-packers in their capacity as producers, and importers were eligible to vote. In addition, the revised procedures specify that only producers, producer-packers in their capacity as producers, and importers will be eligible to vote in future referenda if the votable amendments are not approved in the upcoming referendum.

The amended referendum procedures in this final rule will 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 will be redesignated as Subpart C—Referendum Procedures and will 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 will not change as a result of the February 28, 2000, proposed rule on amendments to the Order, the definition of importer in the referendum procedures will be changed

to be consistent with the proposed definition of importer in the Order.

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

Comments on the revised referendum procedures. In response to the May 15, 2000, proposed rule on these procedures, a producer, a honey industry group, and the Board submitted comments. All three comments expressed concern that there may be confusion regarding handlers' voting rights. They correctly pointed out that each voter is entitled to vote the poundage on which the voter would pay assessments if the amendments are approved in the referendum. Therefore, to clarify that handler ballots only include domestic honey, we have inserted the word "domestic" where appropriate in the supplementary information portions of this rule and in the definition of "eligible handler" in § 1240.201(e) of the procedures.

The Board's comment also expressed concern about handlers who also produce and import honey and about handlers who purchase honey from producer-packers or importers. This issue relates to the fact that a person may meet more than one voting criteria and may be eligible to cast more than one ballot. The Board also requested that AMS utilize three separate ballots. It has been determined that these comments do not require any additional changes to the referendum procedures, but AMS has decided to utilize three separate ballots. One ballot will be for producers and producer-packers covering the pounds of honey produced. A second ballot will be for the pounds of domestic honey handled by producer-packers and handlers. The third ballot will be for importers (including producers, producer-packers, and handlers who are also importers) and cover the pounds of foreign honey and honey products imported. Similarly, importers will also be entitled to cast a handler ballot for the handler portion of the assessments they would pay on imported honey and honey products if the votable amendments are approved.

The Board's comment also raised additional issues. The Board stated that the terminology in the Question and Answer Overview (Q&A's) incorrectly characterized the importer's voting rights as one vote as a producer and one vote as an importer. The comment quoted the Act which states that each importer shall have one vote as an importer and one vote as a handler. The comment has been adopted and the terminology corrected in the Q&A's and elsewhere in this final rule.

The Board also requested USDA to include the penalty for filing false information with USDA in the Q&A's, and this comment has been adopted.

In addition, the Board requested an explanation of the voting rights of cooperatives and producers who market honey through cooperatives. This comment has been adopted, and the Q&A's now include discussion on this subject.

The Board also requested that the number of ballots cast and the number of ballots determined to be invalid be included in the referendum report. Although this is information normally appears in the report, we have revised § 1240.206 to specify that the referendum report include this information.

Lastly, the Board requested USDA to publish the names of all voters on a web site for a period of two days following the voting deadline to allow persons to challenge voters via e-mail. Although USDA understands the value of a challenge process, the Act prevents the Department from adopting the comment. Section 12(d) of the Act states that "The ballots and other information or reports that reveal, or tend to reveal, the identity or vote of any producer, importer, or handler of honey or honey products shall be held strictly confidential and shall not be disclosed."

Adoption of proposed changes. This final rule adopts with change the amendments which were published in the May 15, 2000, proposed rule. The changes provide that handlers, producer-packers, and importers may cast ballots as handlers in the upcoming referendum on votable amendments to the Order. In addition, this rule revises the definition of importer so that the definition of this term is identical in the referendum procedures and in the amended Order. This rule also redesignates the rules and regulations subpart of the honey program as Subpart B and designates the referendum procedures as subpart C. As a result of comments received, this rule also slightly revises the definition of "eligible handler" to clarify that handlers vote on the basis of the domestic honey or honey products handled.

Additional USDA change. The Department has decided to change the name of the subpart containing these referendum procedures in the interest of plain language in regulations. The original name, which was also included in the May 15, 2000, proposed rule, was "Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order." This

final rule shortens the name to "Referendum Procedures."

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, Part 1240 of Title 7, Chapter XI of the Code of Federal Regulations, is 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. Revise the heading for Subpart—General Rules and Regulations to read as follows:

Subpart B—General Rules and Regulations

3. Designate Subpart—Procedure for the Conduct of Referenda in Connection with the Honey Research, Promotion, and Consumer Information Order as Subpart C and revise it to read as follows:

Subpart C—Referendum Procedures

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.

§ 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.

Dated: July 26, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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