



July 18<sup>th</sup> 2015

Organic Promotion, Research, and Information Order;  
Room 3071-S, STOP 0201;  
Agricultural Marketing Service, USDA;  
1400 Independence Avenue, SW.;  
Washington, D.C. 20250-0201;  
Telephone number: (202) 720-5115.

Submitted by email: [amsadministratoroffice@ams.usda.gov](mailto:amsadministratoroffice@ams.usda.gov)

Please accept this partial proposal on a new industry-funded promotion, research and information order for organic products, which would be developed under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act).

I am submitting this proposal on behalf of NODPA which is the largest organic dairy producer organization in the country with a membership of eight hundred and thirty six organic dairy producers in the Eastern USA. NODPA's mission is to **“enable organic dairy family farmers, situated across an extensive area, to have informed discussion about matters critical to the well-being of the organic dairy industry as a whole.”** NODPA is not aligned with any one processor or cooperative and therefore is able to represent the views and needs of many different farmers.

Our farmer-members do not think that a mandatory USDA checkoff program is the correct vehicle to address the needed organic marketing, research, nor support for increased domestic organic production. While our members feel all of these areas are important for the future of a strong organic agriculture in the USA, a USDA Generic Research and Promotion Order for Organic would not be the vehicle of choice. That being said, because the Organic Trade Association (OTA) has applied to establish such a program, albeit falsely claiming broad farmer support, we would like to outline the areas of the proposal that would need to be addressed to fairly propose such an idea to the organic agricultural community.

We believe that it is a fundamentally democratic right that all organic certificate holders have a vote as to whether a Generic Research and Promotion Order for Organic is established. A federally mandated program is designed to affect every level of the organic marketplace and every certificate holder should have the right to vote on establishing one and letting one continue. Our partial proposal outlines an assessment where small entities will be assessed at rates low enough not to cause financial hardship.

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**Media Editor, Membership and  
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**NODPA's Mission**

*To enable organic dairy family farmers, situated across an extensive area, to have informed discussion about matters critical to the well-being of the organic dairy industry as a whole.*

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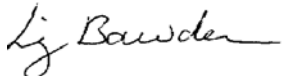
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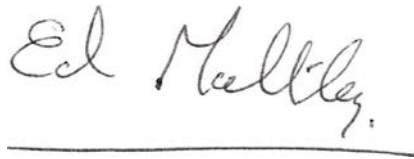
As an organization of organic producers we tried and failed to become involved with the Organic Trade Association's committee to investigate and develop a proposal to make certified organic production which is a production system into a commodity. When it was obvious that this committee was more interested in scripted town meetings and webinars where it was impossible to comment on the proposal, we decided to stop any involvement as we became part of the numbers game that OTA could quote as being involved in their proposal. We therefore thank the administrator for allowing the opportunity for those groups not aligned with the trade association for the "organic commodity" to put forward their ideas on the best way to develop the certified organic production to the benefit of all stakeholders.

Thank you for your consideration. Please contact Ed Maltby if you require any more information.

Sincerely



NODPA Board Chair and New York organic dairy farmer



NODPA Executive Director

## **R&P Program Partial Proposal Application**

### **Industry Overview**

The Northeast Organic Dairy Producers Association (NODPA) hereby submits this partial proposal for the Generic Research and Promotion Order for Organic (“GRO Organic”) pursuant to the Commodity Promotion, Research and Information Act of 1996.

#### **I. Industry Analysis**

The Organic Trade Association (OTA) did a fine job of providing the USDA with a comprehensive history of the organic agricultural movement and market growth. One area that was minimized in their summary was an emphasis on the intention and meaning of organic agriculture and the organic label. Organic agriculture was created in this country by small to mid-scale family farmers who wanted to create a farming system and market based on production values that embraces the environment, social justice, and economic viability. Small to mid-size family farmers built the organic label in this country at a grassroots level, and the current success of the organic market has them to thank for this. Currently the majority of organic operations in the US are independent farmers and the OTA outlines that over 60% are small farmers, grossing less than \$250,000 per year.

The Northeast Organic Dairy Producers Association (NODPA) is the largest organic dairy producer organization in the country with a membership of eight hundred and thirty six organic dairy producers in the Eastern US. NODPA’s mission is to “enable organic dairy family farmers, situated across an extensive area, to have informed discussion about matters critical to the well-being of the organic dairy industry as a whole.” NODPA is not aligned with any one processor or cooperative and therefore is able to represent the views and needs of many different farmers. **Our farmer-members do not think a mandatory USDA checkoff program is the correct vehicle to address the needed organic marketing, research, nor support for increased domestic organic production. While our members feel all of these areas are important for the future of a strong organic agriculture in the US, a USDA Generic Research and Promotion Order for Organic would not be the vehicle of choice. That being said, because the OTA has applied to establish such a program, albeit falsely claiming broad farmer support, we would like to outline the areas of the proposal that would need to be addressed to fairly propose such an idea to the organic agricultural community.**

#### **II. Program Justification**

##### **a. What research and marketing problems exist?**

The rapid growth of the U.S. organic industry has given rise to unique challenges that need to be addressed in order for the industry to sustain and continue its current growth. The overarching purpose of a Generic Research and Marketing Program is defined by USDA as to increase demand without placing one sector at a competitive disadvantage and as such any program dollars cannot be spent only to promote domestic organic production. NODPA believes that in order to address the lack of supply to meet the rapid increase in US demand, we need a program that will support the growth of US supply by encouraging non-organic growers to transition more acres to organic, certified organic producers to expand their certified organic acreage, a fair, equitable, and profitable farm gate price for all segments of organic production, and new farmers to begin farming using certified organic methods.



into a program which they were not entitled to vote on. Furthermore, a plan for assessment must be fair across commodities. Dairy farmers have a high gross sales number, but typically low net profit, while other commodities like high-value fruits and vegetables typically have a lower gross sales but higher net profit. It is estimated from our membership that most small dairies would meet the gross organic sales level of \$250,000.

Because of the disparities present in an assessment based on excluding producers grossing under \$250,000, we feel strongly that all organic certificate holders should be assessed and that the assessment should be made on Gross Organic Sales, rather than net profit as net profit is complex for small businesses that typically produce all their own farm inputs. Small to mid-size producers may rent or own more acreage to grow their own organic inputs, a strategy necessary in many parts of the country to maintain access to these organic inputs. Furthermore, small to mid-size organic farms have high labor costs, an expense typical of farms who have not reached the scale requiring more mechanization--these costs would not be included in the some definitions of net organic sales. Generating net profit numbers for the purposes of the GRO Organic Program will be overly onerous for small businesses and expose them to increased risk for financial audits by the Board. The fairest method for assessment and to measure everyone's interest in a GRO Organic Program is to equally assess small businesses (producers and producer-handlers) at an assessment of one-hundredth of one percent of their Gross Organic Sales (.001%) and organic handlers, product processors, and organic importers at a progressive assessment of reflecting their ability to pay, which will allow all certificate holders the right to vote in any program referendums. Our producer members and producers who have been polled tell us that this level of assessment would not be burdensome.

We anticipate that the GRO Organic Program will impact small businesses with annual receipts less than \$750,000. We do not know how many organic producers, producer-handlers, handlers, product processors, and importers meet the regulatory threshold as set forth by the SBA and are subject to assessment, however we do know that a majority of organic certificate holders are small to mid-size organic producers that would likely qualify under this definition. Requiring quarterly assessment reports is overly onerous as it is unlikely that many small to mid-size farms have bookkeeping employees or "staff to operate and manage their computer system." Assessing producers, producer-handlers, handlers, and product processors on their Gross Organic Sales would make the assessment reports straight forward, equitable across different types of certificate holders, and less complicated, and would reduce the need for bookkeeping staff or specialized contract labor to meet the assessment requirements. We estimate that this method could be completed by the accounting staff or farmer in one hour of work or none if the assessment is taken out by the first handler.

## **V. Industry Support**

The Organic Trade Association and the GRO Organic Core Committee facilitated preliminary discussions in the organic sector to determine whether there is a need for an organic promotion and research order as outlined in their proposal, but they *did not* accurately reflect the farmer feedback from those discussions. From member participation and attendance in the majority of the OTA town halls and webinars, we can attest that there was much farmer opposition to the proposed OTA and GRO Organic Committee's proposal of an organic checkoff program. Because of this disparity, we recommend that the USDA offer a Comment Period of Inquiry, similarly as it did for the recent beef checkoff proposal, before publishing any proposal to the federal register for comment to first measure whether there is industry support for a Generic Research and Promotion Order for Organic. Alternatively or in addition to a comment period of inquiry, the USDA National Organic Program should host an independent outside survey of all organic certificate holders to obtain objective and neutral third-party data on whether a Generic Research and Promotion Order for Organic program is supported by the

organic industry. The 'Organic commodity' is unique in so far as the USDA Agricultural Marketing Service has a database of all those that are within the commodity and could use that to measure support for the proposed program. Our membership and the farmer-membership of many other organic-farming based organizations strongly demonstrate producer opposition to any organic checkoff proposal (see [www.noorganiccheckoff.com](http://www.noorganiccheckoff.com) where testimonials from hundreds of organic producers and consumers oppose an organic checkoff and over 680 people have signed a petition to end the checkoff proposal (See Attachment 1).

## VI. Text of the Proposal

PART 12XX— Generic Research and Promotion Order for Organic  
Subpart A— Generic Research and Promotion Order for Organic

From **Agriculture Reform, Food, and Jobs Act of 2013:**

SEC. 10012. ORGANIC PRODUCT PROMOTION ORDERS.

(b) Organic Commodity Promotion Order- Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7401) (as amended by subsection (a)) is amended by adding at the end the following:

(f) Organic Commodity Promotion Order-

(1) DEFINITIONS- In this subsection:

(A) CERTIFIED ORGANIC FARM- The term 'certified organic farm' has the meaning given the term in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

**(B) COVERED PERSON- The term 'covered person' means a producer, handler, marketer, or importer of an organic agricultural commodity.'**

### DEFINITIONS

Our partial proposal does not require definitions for the following because they are obsolete in our partial proposal:

- §12XX.4 Certificate of exemption.
- §12XX.13 Net organic sales.
- §12XX.23 Producer net profit.
- §12XX.33 Voluntarily assessed entity.

Subpart A— Generic Research and Promotion Order for Organic

### DEFINITIONS

§12XX.22 Person.

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

§12XX.15 Organic certificate holder.

Organic certificate holder means a person who is not exempt or excluded from certification pursuant to 7 CFR 205.101 and who holds a valid organic certificate pursuant to 7 CFR 205.400 through 7 CFR 205.406.

§12XX.16 Organic handler.

Organic handler means a person who is handling certified organic products in accordance with the requirements specified in 7 CFR 205.101 or 7 CFR 205.270 through 7 CFR 205.272 and all other applicable requirements of this part 205 and receives, sell, consign, deliver, or transport certified organic products into the current of commerce in the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§12XX.17 Organic importer.

Organic importer means any organic producer, organic producer-handler, organic handler with gross organic revenue person who imports certified organic products from outside the United States for sale in the United States.

§12XX.18 Organic producer.

Organic producer means a person who has produced certified organic products in accordance with the requirements specified in 7 CFR 205.101 or 7 CFR 205.202 through 7 CFR 205.207 or 7 CFR 205.236 through 7 CFR 205.240 and all other applicable requirements of part 205.

*NODPA recommends including a definition of organic producer-handler under the proposed generic research and promotion program that defines the small- to mid-size producer who markets organic products directly to the consumer. This type of handler operates at a much smaller scale than the typical handler, which is often a large processing facility marketing at the wholesale level. Our proposed definition for Organic Producer-Handler is as follows:*

§12XX.19 Organic producer-handler.

Organic producer-handler means a person who is an organic producer who markets organic products direct to the consumer.

§12XX.20 Organic product processor.

Organic product processor means a person who has cooked, baked, heated, dried, mixed, and grinded, churned, separated, extracted, cut, fermented, eviscerated, preserved, dehydrated, frozen, or otherwise manufactured organic products, and includes the packaging, canning, jarring, or otherwise enclosing organic food in a container.

§12XX.21 Organic products.

Organic products means products produced under the authority of the Organic Foods Production Act of 1990 (7 U.S.C. 6501-6522), and any amendments thereto.

*NODPA recommends a definition of organic research under the proposed generic research and promotion program that focuses on the real research needs of independent producers which would help to close the gap between national supply and demand as well as keep US producers competitive with a growing international organic market. Our proposed definition for §12XX.27 Research is as follows:*

§12XX.27 Research.

*Research* means any type of investigation, study, evaluation, or analysis (including related education, extension, and outreach activities) designed to improve organic farm production systems and practices, increase farm profitability and productivity, expand organic farming opportunities, and enhance quality of life for farm families and their communities; enhance plant and animal breeding and varietal development for organic systems and improve the availability of other production inputs; optimize natural resource conservation, biodiversity, and environmental outcomes of organic agriculture; advance organic farm and food safety objectives; enhance or increase the consumption, image, desirability, use, marketability, or production of organic products; or to do studies on nutrition, market data, processing, environmental and human health benefits, quality of organic products, including research directed to organic product characteristics and product development, including new uses of existing organic products, new organic products or improved technology in the production, processing and packaging of organic products.

GENERIC RESEARCH AND PROMOTION ORDER FOR ORGANIC BOARD

§12XX.40 Establishment and membership.

- (a) Establishment of the Board. There is hereby established a Generic Research and Promotion Program for Organic Board to administer the terms and provisions of this Order. Seats on the Board shall be apportioned as set forth in paragraph (b) of this section. There shall be no alternate Board members.
- (b) The Board shall be composed of 25 members and shall be established as follows:
  - (1) Sixteen organic producers representing equitable diversity in geography, commodity, and size of operation. None of these producer members may hold additional organic certificates (no producer-handlers, organic handlers or product processors).
  - (2) Two organic producer-handler members;
  - (3) Three organic handler members;
  - (4) Two organic product processor members;
  - (5) One organic importer member; and,
  - (6) One at-large public member, who shall be a non-voting member.
- (c) Any changes in Board composition shall be implemented by the Secretary through rulemaking.
- (d) At least once in every five-year period, but not more frequently than once in every three-year period, the Board will review the geographical distribution, commodity representation, and sizes of operations of certified organic operations in the United States with respect to the organic producer Board members to ensure that equitable representation is achieved. The review will be conducted using the NOP's list of certified organic operations and, if available, other reliable reports from the industry. If warranted, the Board will recommend to the Secretary that certain factors be prioritized to achieve greater



representation in future producer board member seats. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

#### §12XX.41 Nominations and appointments.

(a) Nominees must be organic producers, organic producer-handlers, organic handlers, organic product processors, or organic importers who produce, handle or import organic products in the marketing year.

(b) Initial nominations shall be submitted to the Secretary. Before considering any nominations, the Secretary shall publicize the nomination process, using trade press or other means deemed appropriate, and shall conduct outreach to all known organic producers, organic producer-handlers, organic handlers, organic product processors, and organic importers to generate nominees that reflect the range of operations within the organic industry. The Department may use local, state, or regional entities, mail or other methods to elicit potential nominees. The Department shall ensure that all eligible candidates are aware of the opportunity to serve on the Board. The Secretary shall select the members of the Board from the nominations submitted.

(c) Subsequent nominations shall be conducted as follows:

(1) The Board shall conduct outreach to all known organic producers, organic producer-handlers, organic handlers, organic product processors and organic importers by mailings to all certified entities on the USDA AMS list; by requesting that certifiers send information to all their certified entities; by using all the resources available to USDA including the Organic Insider and by any other means it seems appropriate. Organic producers, organic producer-handlers, organic handlers, organic product processors, organic importers, and non-voting at large candidates may submit nominations to the Secretary;

(2) Organic producer, organic producer-handler, organic handler, organic importer, organic product processor, and non-voting at large nominees shall provide the Secretary with a short background statement outlining their qualifications to serve on the Board. For the organic producer Board seats, nominees must specify where they farm, acreage farmed, gross organic sales, and the commodities grown on their farm;

(3) Nominees for organic producer seats may not hold multiple organic certificates (for handling and/or importing). Organic producer-handler, organic handler, organic importer, organic product processor, and non-voting at large nominees may hold multiple organic certificates (for production, handling, and/or importing) and may seek nomination to the Board for any non-producer seat for which they are qualified;

(5) For the Board seats allocated to organic producers, organic producer-handlers, organic handlers, organic product processors, the organic importer, and the non-voting at-large, nominees will submit applications directly to the Secretary;

(6) Any person nominated to serve on the Board shall file with the Secretary at the time of the nomination a background questionnaire;

(7) From the nominations made pursuant to this section, the Secretary shall appoint the members of the Board on the basis of representation provided in §12XX.40;

(8) No two members of the Board shall be employed by a single corporation, company, partnership or any other legal entity;

(9) The Board may recommend to the Secretary modifications to its nomination procedures as it deems appropriate. Any such modifications shall be implemented through rulemaking by the Secretary; and,

(10) The Board shall strive for diversity in its membership. This includes diversity that meets Equal Employment Opportunity requirements, as well as diversity among organic products based on the proportions of assessments paid, diversity among crop type, diversity among geographic regions, diversity among the segments represented in the supply chain, diversity in the size of operations, diversity in marketing expertise, and diversity in research experience.

#### §12XX.44 Procedure.

(a) A majority of the Board members shall constitute a quorum as long as at least 12 producer members are present.

(b) Each voting member of the Board shall be entitled to one vote on any matter put to the Board and the motion will carry only if supported by a majority of Board members, except for recommendations to change the assessment rate, change the Board composition, or to adopt a budget, both of which require affirmation by two-thirds of the total number of voting Board members.

(c) At an assembled meeting, all votes shall be cast in person.

(d) In lieu of voting at an assembled meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action only if supported by a majority of members (unless two-thirds is required under the Order) by mail, telephone, electronic mail, facsimile, or any other means of communication. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at an assembled meeting. All votes shall be recorded in Board minutes.

(e) There shall be no proxy voting.

(f) Board meetings and any sub-committee meetings will be open to the public and all minutes from the meetings will be posted on the web within 15 business days. All Board meeting will have time allowed for public comment.

#### §12XX.45 Reimbursement and attendance.

Board members shall serve without compensation, but shall be reimbursed for reasonable travel expenses, which may include a per diem allowance or actual subsistence allowance while working for the Board away from their homes or regular places of business as approved by the Board, which they incur when performing

Board business. For producer members, reimbursed reasonable travel expenses will include compensation for the hiring of temporary help to cover their work on the farm when performing Board business.

## EXPENSES AND ASSESSMENTS

### §12XX.50 Budget and expenses.

(a) At least 60 calendar days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Department a budget for the fiscal year covering its anticipated expenses and disbursements in administering this part. The budget for research, promotion or information may not be implemented prior to approval by the Secretary. Each such budget shall include:

- (1) A statement of objectives and strategy for each program, plan or project;
- (2) A summary of anticipated revenue, with comparative data for at least one preceding fiscal year, which shall not include the initial budget;
- (3) A summary of proposed expenditures for each program, plan or project. This shall include the following allocation of expenditures:
  - (i) The funds shall be allocated as follows: 65 percent for research, 20 percent for information, 10 percent for promotion, and 5 percent for discretionary funds; and
  - (ii) Of the funds allocated to research, no less than half shall be allocated to producer/farmer/ranchers who want to carryout organic research, demonstration, and education projects on their farms either individually or in groups. This research should take into account regional differences and priorities for producer-oriented research. Funds should be allocated equitably to reflect regional producer research needs.
  - (iii) Any expenditures designated for the categories set forth in (i) and (ii) of this section that are not spent in a fiscal year shall carry over for the same category for the following fiscal year.

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding fiscal year, except for the initial budget.

(a) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this Order.

(b) Subject to this section, any amendment or addition to an approved budget must be approved by the Department, including shifting funds from one program, plan or project to another. Shifts of funds that do not result in an increase in the Board's approved budget and are consistent with governing bylaws need not have prior approval by the Department.

(c) The Board is authorized to incur such expenses, including provision for a reserve, as the Secretary finds reasonable and likely to be incurred by the Board for its maintenance and functioning, and to

enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(d) With approval of the Department, the Board may borrow money for the payment of startup expenses subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed shall be expended only for startup costs and capital outlays and are limited to the first year of operation by the Board.

**(e) The Board will not accept voluntary contributions.**

**(f) The Board may also receive other funds provided through the Department with the approval of the Secretary, for authorized activities.**

(g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, enforcement and supervision of the Order, including all referendum costs in connection with the Order.

(h) For fiscal years beginning three years after the date of the establishment of the Board, the Board may not expend for administration, maintenance, and the functioning of the Board an amount **that is greater than 10 percent** of the assessment and other income received by and available to the Board for the fiscal year. For purposes of this limitation, reimbursements to the Secretary shall not be considered administrative costs.

(i) Any program, plan or project receiving funds under this section shall not expend for administration an amount that is **greater than 10 percent** of the total funds allocated to the program, plan or project.

(j) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal years excess funds in any reserve so established: Provided, that, the funds in the reserve do not exceed one fiscal year's budget of expenses. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this subpart.

(k) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Board may invest assessments and all other revenues collected under this part in:

- (1) Obligations of the United States or any agency of the United States;
- (2) General obligations of any State or any political subdivision of a State;
- (3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System;
- (4) Obligations fully guaranteed as to principal interest by the United States; or
- (5) Other investments as authorized by the Secretary.

#### §12XX.52 Assessments.

(a) The Board's programs and expenses shall be paid by assessments on assessed entities, other income of the Board, and other funds available to the Board.

(b) Subject to the offset specified in §12XX.54 each organic producer, organic producer-handler, organic handler and organic importer with gross organic revenue shall pay the following assessments to the Board. For organic producers that assessment will be paid by the organic handler from information they have on the Gross Organic Sales of the producer as prescribed in the 1996 Act:

(1) Organic producers and organic producer-handlers shall pay one-hundredth of one percent (.001%) of Gross Organic Sales.

(2) Organic handlers and product processors, shall pay an assessment starting at 0.01 % for those companies under \$1 million in gross organic sales, 0.1% for those companies between \$1-5 million, 1% for those between \$10 to 20 million and increasing to two percent (2%) for those over \$20 million in Gross Organic Sales of products that are certified to the “100% organic” or “organic” standard pursuant to 7 CFR § 205.301(a) and (b). Organic handlers and product processors shall pay an assessment of 70% of two percent (2%) of Gross Organic Sales of products that are certified to the “made with organic” standard pursuant to CFR § 205.301(c).

(3) Organic importers shall pay an assessment to the Board through Customs on organic products imported for marketing in the United States. Organic importers shall pay an assessment of two percent (2%) of Gross Organic Sales of products that are certified to the “100% organic” or “organic” standard pursuant to 7 CFR § 205.301(a) and (b). Organic importers shall pay an assessment of 70% of two percent (2%) of Gross Organic Sales of products that are certified to the “made with organic” standard pursuant to 7 CFR § 205.301(c). If Customs does not collect an assessment for the organic product from an organic importer, the organic importer is responsible for paying the assessment directly to the Board within 90 calendar days after the end of the quarter in which the organic products were imported.

OR (note two options for importers, subject to determination in consultation with Customs)

(3) Each importer of organic products shall pay through Customs to the Board an assessment of two percent (2%) of Gross Organic Sales on the organic product imported into the United States identified in the Harmonized Tariff Schedule of the United States (HTS) numbers. The HTS is updated biannually and any updates published by the U.S. International Trade Commission will be considered effective immediately upon publication. Organic importers shall pay an assessment of 70% of two percent (2%) of Gross Organic Sales of products that are certified to the “made with organic” standard pursuant to 7 CFR § 205.301(c). The assessment on imported organic products shall be paid by the organic importer to Customs at the time of entry into the United States and shall be remitted by Customs to the Board. Importation occurs when organic products originating outside the United States are released from custody of Customs and introduced into the stream of commerce within the United States. Organic importers include persons who hold title to foreign organic products immediately upon release by Customs, as well as any persons who act on behalf of others, as agents, brokers, or consignees, to secure the release of organic product from Customs and the introduction of the released organic products into the current of commerce. If Customs does not collect an assessment from an organic importer, the organic importer is responsible for paying the assessment directly to the Board within 90 calendar days after the end of the quarter in which the organic products were imported.

(c) Each organic producer-handler, organic handler, and organic product processor shall remit to the Board the amount due no later than 60 days following the end of the year in which the organic product was produced or handled. Quarterly payments may be accepted.

(d) At least 24 months after the Order becomes effective and periodically thereafter, the Board shall review and may recommend to the Secretary, upon an affirmative vote of at least two-thirds of the voting members of the Board, a change in the assessment rate. A change in the assessment rate is subject to rulemaking by the Secretary.

(e) When an organic producer-handler, organic handler, organic product processor or organic importer fails to pay the assessment within 60 calendar days of the date it is due, the Board may impose a late payment charge and interest. The late payment charge and rate of interest shall be prescribed in regulations issued by the Secretary. All late assessments shall be subject to the specified late payment charge and interest. Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(f) The Board may accept advance payment of assessments from any organic producer-handler, organic handler, organic product processor or organic importer that will be credited toward any amount for which that person may become liable. The Board may not pay interest on any advance payment.

(g) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall receive assessments and shall pay such assessments and any interest earned to the Board when it is formed.

§12XX.53 Voluntarily assessed entities.

*We propose to eliminate voluntarily assessed entities. Every organic certificate holder should have the right to and be required to participate in and have representation in a mandatory research and promotion order. A federally mandated program is designed to affect every level of the organic marketplace and every certificate holder should have the right to vote on establishing one and letting one continue. Our partial proposal outlines an assessment where small entities will be assessed at rates low enough not to cause financial hardship. Basing every assessment on Gross Organic Sales, reduces the administrative time and expertise required to meet the research and promotion order reporting requirements.*

## REPORTS, BOOKS, AND RECORDS

§12XX.70 Reports.

(a) Organic producer-handlers, organic handlers, organic product processors and organic importers will be required to provide periodically to the Board such information as the Board, with the approval of the Secretary, may require. Such information will include:

- (1) For organic producer-handlers, organic handlers, and organic product processors:
  - (i) The name, address and telephone number of the assessed organic producer and/or producer-handler and/or organic handler and/or organic product processor and
  - (ii) The value of Gross Organic Sales of the organic products.

- (2) For organic importers:

- (i) The name, address and telephone number of the organic importer;
- (ii) The value of the gross organic sales of the organic products imported by type; and
- (iii) The country/countries of export.

(b) For organic producer-handlers, organic handlers, and organic product processors, such information shall be reported to the Board no later than 60 days following the end of the calendar year.

(c) For organic importers who pay their assessments directly to the Board, such information shall accompany the payment of collected assessments within 60 calendar days after the end of the year or the end of the quarter in which the organic product was imported specified in §12XX.XX.

## MISCELLANEOUS

### §12XX.80 Right of the Secretary.

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

### §12XX.81 Referenda.

(a) Initial referendum. The Order shall not become effective unless the Order is approved by a majority of eligible voters voting in the referendum. A single eligible voter may cast one vote in the referendum. Bloc voting shall be prohibited.

(b) Subsequent referenda. Every seven years, the Department shall hold a referendum to determine whether assessed entities favor the continuation, suspension, or termination of the Order. The Order shall continue if it is favored by a majority of the assessed entities voting. The Department will also conduct a referendum if 10 percent or more of all assessed entities request the Department to hold a referendum. Bloc voting shall be prohibited.

## Subpart B—Referendum Procedures

### §12XX.100 General.

Referenda to determine whether eligible organic producers, organic producer-handlers, organic handlers, organic product processors and organic importers favor the issuance, continuance, amendment, suspension, or termination of the Generic Research and Promotion Order for Organic shall be conducted in accordance with this subpart.

### §12XX.101 Definitions.

For the purposes of this subpart:

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

(b) Organic product means any product produced under the authority of the Organic Foods Production Act of 1990 (7 U.S.C. 6501-6522), and any amendments thereto.

(c) Customs or CBP means the U.S. Customs and Border Protection, an agency of the U.S. Department of Homeland Security.

(d) Department means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(e) Eligible voter means any person who is currently (i) an organic producer, organic producer-handler, organic handler, organic product processor, or organic importer that either has gross organic revenue in organic products during the representative period. Any person that holds multiple organic certificates (i.e. for both production and handling) will be allowed only one vote.

(f) Eligible importer means any person who is currently an organic importer with gross organic revenue of organic products during the representative period as a principal or as an agent, broker, or consignee of any person who produced or handled organic products outside of the United States for sale in the United States, and who is listed as the importer of record for such organic products. Importation occurs when organic products outside of the United States is released from custody by Customs and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-manufactured organic products immediately upon release by Customs, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of organic products from Customs when such organic products is entered or withdrawn for use in the United States.

(g) Order means the Generic Research and Promotion Order for Organic.

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

(1) A husband and a wife who have title to, or leasehold interest in organic production, organic handling or organic import entity 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 an agreement, informal or otherwise, contributed land, facilities, 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 organic products and the authority to transfer title to the organic products.

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



(j) Representative period means the period designated by the Department.

(k) United States means collectively the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

#### §12XX.102 Voting.

**(a) The Department will use the USDA AMS National Organic Program database of organic certificate holders and mail a ballot to each certificate holder with a stamped return address envelope. The Department will instruct certifiers to mail a ballot to all the entities it certifies. All ballots will be cast by mail directly to the Department. Voter will be instructed to fill out the ballot and place the finished ballot in an envelope with the word “Ballot” on it. That envelope with the word Ballot on it will be placed into a stamped addressed envelope that contains the returned mailing address of the voter and who they are certified by and mailed to the Department.**

(b) Proxy voting is not authorized, but an officer or employee of an eligible voter, or an administrator, executor, or trustee of an eligible voter may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible voter, or an administrator, executive, 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.

(c) A single eligible voter may cast one vote in the referendum.

**(d) All ballots are to be cast by mail and will be anonymous, as instructed by the Department.**

#### §12XX.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, consistent with the provisions of this subpart, 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 related material will at least include information from those proposing the referendum and those opposing it to ensure that the vote has all the information in one mailing.**

(c) Give reasonable public notice of the referendum:

**(1) By using available media or public information sources, including paid advertising. Such sources of publicity may include, but are not limited to, print and radio; and**

**(2) By such other means as the agent may deem advisable, including holding outreach educational meeting on the proposal to be voted on in different parts of the country, especially in those rural areas that lack internet connectivity.**

(d) The Secretary must provide public notice of instructions on voting and a summary of the terms and conditions of the proposed Order. All eligible voters will receive by mail a ballot. 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. In opening the envelopes the outside mailing envelope will be checked first to ensure that it has been mailed by an eligible voter and the envelope with the ballot in will be placed in a separate pile and opened by someone different from who opened the mailing envelope to ensure that all votes cast are anonymous;

(f) Prepare a report on the referendum; and

(g) Announce the results to the public within 60 days of the end of the voting period.

(h) The Secretary must implement the decision of the referendum within 60 days of declaring the result of the referendum

#### §12XX.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted unless the result will be impacted by these ballots.