

R&P Program Application Industry Overview

The Organic Trade Association and GRO Organic Core Committee hereby submit this proposal for the Generic Research and Promotion Order for Organic (“GRO Organic”) pursuant to the Commodity Promotion, Research and Information Act of 1996.¹

I. Industry Analysis

a. History

Organic agriculture began being defined and gaining support in the United States in the early 1970s. Organic standards were originally initiated through trade associations or private organizations, and were voluntary.² Some of the first voluntary organic certifications were created by the Rodale Press in California in 1972, which led to the creation of the California Certified Organic Farmers association in 1973,³ and the Northeast Organic Farming Association in 1977.⁴ States also started adopting organic certification standards in the late 1970s and early 1980s.⁵ The certification standards were designed to support growing consumer demand for organic products and prevent fraud. The various organic certification standards, however, were not unified in defining what qualified as organic agriculture. The lack of a uniform definition resulted in consumer confusion as a result of labeling, and complications with trade in foreign markets. The need for a national standard to unify the industry and ensure that foods labeled as organic adhered to one set of strict guidelines resulted in Congress passing the Organic Foods and Production Act (OFPA) in 1990.

The OFPA authorized the U.S. Department of Agriculture (USDA) to develop national standards for the production and handling of organic products. In 1992 the first National Organic Standards Board (NOSB) was appointed and the National Organic Program (NOP) was established within the USDA. The first proposed rule implementing the OFPA was published in 1997. The rule did not completely follow the NOSB recommendation and drew considerable opposition – receiving more than 280,000 comments, more comments than the USDA had received in any previous proceeding.⁶ This resulted in a revised rule addressing several of the controversial issues becoming final and going into effect in 2002.⁷ The regulation required all

¹ 7 U.S.C. § 7411-7425.

² Carolyn Dimitri and Catherine Greene, *Recent Growth Patterns in the U.S. Organic Foods Market*, Economic Research Service, USDA (September 2002), p. 8, available at, http://www.ers.usda.gov/media/249063/aib777_1.pdf.

³ Brain Baker, *Brief History of Organic Farming and the National Organic Program*, Organic Materials Review Institute (2005), p 1, available at <http://www.sarep.ucdavis.edu/sfr/organic/files-images/intro2.pdf>.

⁴ Grace Gershuny, *Conflicts over Organic Standards – Part 1, History of organic standard-setting and controversies*, Chelsea Green Publishing (September 23, 2010), available at <http://chelseagreen.com/blogs/gracegershuny/2010/09/23/conflicts-over-organic-standards%E2%80%93part-i-history-of-organic-standard-setting-and-controversies/>.

⁵ Brain Baker, *Brief History of Organic Farming and the National Organic Program*, Organic Materials Review Institute (2005), p 1, available at <http://www.sarep.ucdavis.edu/sfr/organic/files-images/intro2.pdf>.

⁶ Certified California Organic Farming, *Our History*, (last accessed February 11, 2015), available at <http://www.ccof.org/ccof/history>.

⁷ Ibid.

1 organic growers and handlers to be certified by state or private agencies/organizations to the new
2 standard developed by USDA.⁸

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4 b. Domestic Market

5
6 The organic sector has experienced significant growth over the last 20 years. Organically
7 produced foods and non-food items started out as a niche market primarily sold in direct-to-
8 consumer markets. Organic products, however, have moved from direct-to-consumer markets to
9 conventional supermarkets due to double-digit growth in consumer demand every year since the
10 1990s.⁹ Organic sales, both food and non-food, increased from \$3.6 billion in 1997 to \$39.1
11 billion in 2014. The growth from 2003 to 2013 is illustrated in Graph 1 below.¹⁰

12
13 The organic food segment makes up the overwhelming majority of organic sales – \$36
14 billion in 2014, or 92 percent of total organic sales.¹¹ Organic food sales saw a 11 percent
15 increase from 2012 to 2013 and an 11 percent increase from 2013 to 2014.¹² Fruits and
16 vegetables continue to be the largest segment of organic food sales, comprising 36 percent of
17 total organic food sales; followed by dairy at 15.2 percent; packaged and prepared foods at 14.7
18 percent; beverages at 12.3 percent; breads and grains at 11.7 percent; snack foods at 5.4 percent;
19 condiments at 2.6 percent; and meat, poultry, and fish at 2.1 percent.¹³

20
21 The organic non-food segment grew 14 percent in 2014 to reach \$3.1 billion in total
22 sales.¹⁴ Organic non-food sales, which represent 8% of all organic product sales, and show faster
23 growth in recent years than the organic food segment.¹⁵ The market for organic products, both
24 food and non-food, is expected to continue to expand at similar rates for the foreseeable future.

⁸ Catherine Greene, Carolyn Dimitri, Biing-Hwan Lin, William McBride, Lydia Oberholtzer, and Travis Smith, *Emerging Issues in the U.S. Organic Industry*, Economic Research Service, USDA (June 2009), p. 2, available at http://www.ers.usda.gov/media/155923/eib55_1_.pdf.

⁹ Catherine Greene, *Organic Agriculture*, Economic Research Service, USDA (last modified April 07, 2014), see *Overview*, available at <http://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture.aspx>.

¹⁰ Organic Trade Association, *2015 Organic Industry Survey* (conducted 2/10/2015 – 4/3/2015), see p. 10.

¹¹ Organic Trade Association, *2014 Organic Industry Survey* (conducted 2/10/2015 – 4/3/2015), see p. 10.

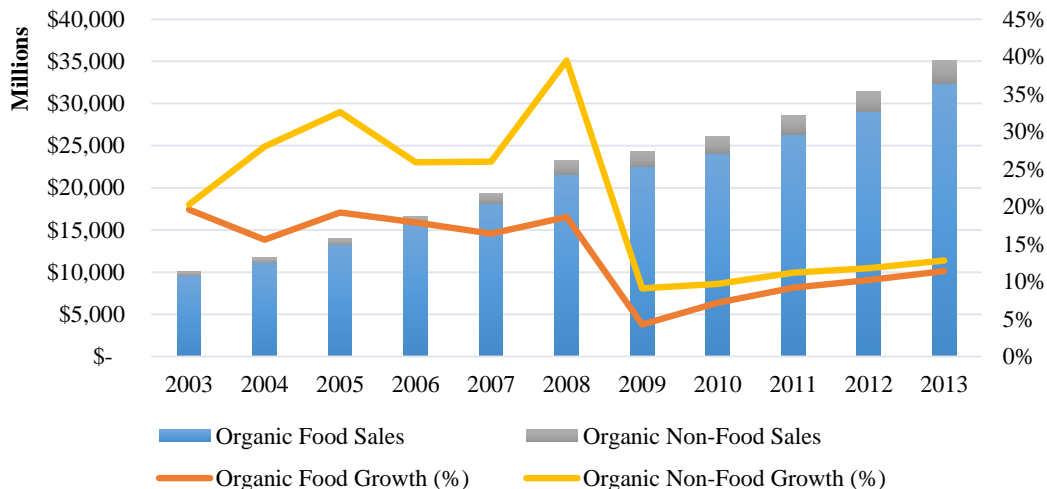
¹² Organic Trade Association, *2014 Organic Industry Survey* (conducted 2/10/2015 – 4/3/2015), see p. 10.

¹³ Organic Trade Association, *2014 Organic Industry Survey* (conducted 2/10/2015 – 4/3/2015), see p. 38.

¹⁴ Organic Trade Association, *2014 Organic Industry Survey* (conducted 2/10/2015 – 4/3/2015), see p. 10.

¹⁵ Organic Trade Association, *2014 Organic Industry Survey* (conducted 2/10/2015 – 4/3/2015), see p. 10.

Graph 1: Total U.S. Organic Sales and Growth, 2003-2013



Source: Organic Trade Association's 2014 Organic Industry Survey conducted 1/27/2014 – 4/5/2014.

Organic foods continue to receive a price premium over their conventional counterparts, though the price premium fluctuates significantly depending upon the commodity. Organic produce and milk receive some of the highest price premiums over their conventional counterparts. These categories are also the top organic food sales categories.¹⁶ For the majority of organic produce, the price premium represents less than a 30 percent price differential. Milk, on the other hand, has been documented receiving a price premium anywhere from 60 to 109 percent.¹⁷

Studies show that the vast majority of American consumers purchase organic food products, with a Consumer Reports survey showing that 84 percent of American consumers purchase organic food. The frequency at which they purchase organic food products, however, varies significantly. Of those surveyed, 18 percent purchase organic food every week. Another 18 percent purchase organic food two to three times a month, while nine percent said they purchase organic food once a month. Thirty-nine percent said they purchased organic food rarely and 15 percent said they never purchase organic food. One percent said they didn't know or were unsure. Almost half of the 84 percent who buy organic foods, do so rarely.¹⁸

¹⁶ Catherine Greene, *Organic Agriculture*, Economic Research Service, USDA (last modified April 07, 2014), see *Organic Market Overview*, available at <http://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture/organic-market-overview.aspx>.

¹⁷ Catherine Greene, *Organic Agriculture*, Economic Research Service, USDA (last modified April 07, 2014), see *Organic Market Overview*, available at <http://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture/organic-market-overview.aspx>.

¹⁸ National Research Center, *Organic Food Labels Survey*, Consumer Reports (March 2014), p. 3, available at <http://www.greenerchoices.org/pdf/CR2014OrganicFoodLabelsSurvey.pdf>.

1 c. Domestic Production

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3 Organic production has also experienced double-digit growth since the 1990s.¹⁹ The U.S.
4 had under a million acres of certified organic farmland in 1990. This number doubled between
5 1990 and 2002, and doubled again between 2002 and 2005. Between 2005 and 2011, the amount
6 of organic pasture and rangeland fluctuated, but certified organic cropland expanded by close to
7 80 percent. Organic livestock experienced even faster growth during the same time period. In
8 2011, there were roughly 5.4 million acres of certified organic farmland – with 3.1 million acres
9 of cropland and 2.3 million acres of rangeland/pasture.²⁰ Despite the growth in certified organic
10 farmland, certified organic farmland remains below one percent of the total farmland acreage in
11 the U.S.

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13 Organic production has grown not only when measured in terms of acreage, but also
14 when measured by the number of certified organic operations. When the USDA first started
15 certifying organic operations under the NOP, there were just over 7,000 certified organic
16 operations. Data released by USDA in April 2015 showed that the number of U.S. certified
17 organic operations increased by more than five percent from 2013 through 2014, to reach 19,474
18 businesses. The farmgate value of all organic product sales in 2011 was approximately \$3.5
19 billion.²¹

20
21 Organic production costs vary by commodity and location. U.S. organic farms on
22 average have higher sales, higher production expenses, and higher operating profits than the
23 average for all U.S. farms.²²

24
25 d. Geographic Distribution

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27 As of 2011 there were certified organic operations in every state. The Western states
28 accounted for over half of the certified organic acreage in the U.S. (55 percent), followed by the
29 Midwest (23 percent), Southwest (11 percent), Northeast (9 percent), and Southeast (2 percent)
30 (see Graph 2). California is the individual state with the highest overall certified organic
31 acreage, accounting for approximately 18 percent of all the certified organic acreage in the U.S.
32 California contains roughly 13 percent of all the certified organic acres in cropland in the U.S.;
33 followed closely by Oregon with 11 percent.²³ Wyoming has the largest amount of certified
34 organic acres in pasture and rangeland at 25 percent of the total U.S. acreage, with California

¹⁹ Catherine Greene, Carolyn Dimitri, Biing-Hwan Lin, William McBride, Lydia Oberholtzer, and Travis Smith, *Emerging Issues in the U.S. Organic Industry*, Economic Research Service, USDA (June 2009), p. 3, available at http://www.ers.usda.gov/media/155923/eib55_1.pdf.

²⁰ Catherine Greene, *Organic Production*, Economic Research Service, USDA (last modified September 27, 2013), see Documentation, available at <http://ers.usda.gov/data-products/organic-production/documentation.aspx>.

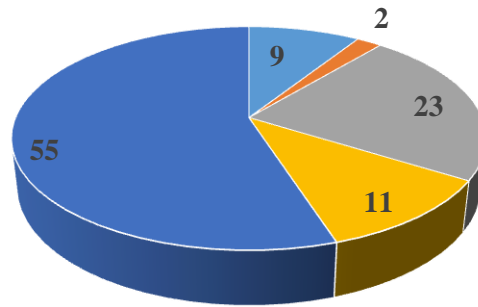
²¹ National Agricultural Statistics Service, *2011 Certified Organic Production Survey*, U.S. Department of Agriculture (October 2012), p. 7, available at <http://usda.mannlib.cornell.edu/usda/current/OrganicProduction/OrganicProduction-10-04-2012.pdf>.

²² National Agricultural Statistics Service, *The 2008 Organic Production Survey*, U.S. Department of Agriculture (2008), p.83, available at http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Organics/organics_1_12.pdf.

²³ Catherine Greene, *Organic Production*, Economic Research Service, USDA (last modified September 27, 2013), see Overview – Table 4, available at <http://ers.usda.gov/data-products/organic-production.aspx>.

1 following closely with 24 percent. Of the Eastern states, New York has the most certified
2 organic cropland acreage with 5 percent.²⁴
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**Graph 2: Certified Organic Farmland by Region, 2011
(in percentage)**



■ Northeast ■ Southeast ■ Midwest ■ Southwest ■ West

4 Source: USDA, Economic Research Service, based on information from USDA-accredited State and private organic
5 certifiers.
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7
8 The year 2000 was a milestone for the organic industry – for the first time, more organic
9 food was purchased in conventional supermarkets than in any other venue.²⁵ Today, 93 percent
10 of organic sales take place in conventional and natural food supermarkets and chains.²⁶ Organic
11 foods are currently available in three out of four traditional grocery stores and about 20,000
12 natural food stores across the U.S.²⁷ The remaining seven percent of organic food sales occur in
13 farmers’ markets, foodservice, and marketing channels other than retail stores. The dramatic
14 increase in conventional store participation in organic sales is not due to any decrease of direct-
15 to-consumer markets. Farmers’ markets, to the contrary, have grown steadily from 1,755
16 markets in 1994 to 8,144 in 2013.²⁸ According to a USDA survey, demand for organic products
17 was strong or moderate in most of the farmers’ markets surveyed. In addition, the market
18 managers believed that more organic farmers were needed to meet consumer demand.²⁹
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²⁴ Catherine Greene, *Organic Production*, Economic Research Service, USDA (last modified September 27, 2013), see Overview – Table 4, available at <http://ers.usda.gov/data-products/organic-production.aspx>.

²⁵ Carolyn Dimitri and Catherine Greene, *Recent Growth Patterns in the U.S. Organic Foods Market*, Economic Research Service, USDA (September 2002), p. 1, available at, http://www.ers.usda.gov/media/249063/aib777_1.pdf.

²⁶ Catherine Greene, *Organic Agriculture*, Economic Research Service, USDA (last modified April 07, 2014), see *Organic Market Overview*, available at <http://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture/organic-market-overview.aspx>.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

1 e. International Trade

2
3 As global demand for organic products increases, USDA-certified organic products are
4 satisfying export opportunities around the world. Canada, the European Union, Japan, and
5 Korea lead global demand for organic products outside of the United States. Industry-supported
6 organic equivalency arrangements are in place for each of these regions, making increased
7 international trade more feasible and cost-efficient for U.S. organic producers. In fact, global
8 demand for USDA-certified organic products is currently not met in most international markets;
9 often a result of domestic supply constraints, rather than consumer unwillingness to pay for high
10 quality imported U.S. goods. Export numbers to these regions and other countries around the
11 world indicate that USDA organic products are trending across the globe.
12

13 According to surveys performed by the Organic Trade Association, U.S. organic exports
14 for 2014 are estimated at \$2.2 billion, up nearly half a billion dollars from 2009.³⁰ Strong growth
15 in U.S. organic exports has continued to increase year after year since data were first reported in
16 2006.³¹ As such, organic products sales growth continues to outpace comparable conventional
17 food items. For example in 2012, organic products sales grew at about 10 percent while
18 conventional counterparts only grew 4 percent. Consumers, especially in Canada, Europe, East
19 Asia, and the Middle East, are demanding more and more products bearing the USDA organic
20 seal. With consistent demand from the world's top economies, international sales opportunities
21 for U.S. organic exports are trending, and extremely likely to increase.
22

23 The international market, however, bears similarities to the U.S. industry before the
24 establishment of a national standard. This is because of a lack of an international standard for
25 organic foods. In order to help promote international trade in organic foods without having to
26 develop an international standard, governments negotiate organic equivalency arrangements.
27 Organic equivalency arrangements allow for two or more countries to accept what the other
28 certifies as organic without having to merge the two standards. The U.S. currently has organic
29 equivalence arrangements with Canada, the European Union, Japan, the Republic of Korea, and
30 Taiwan.³² The arrangement with Taiwan only allows U.S. organic foods to be marketed in
31 Taiwan but does not allow Taiwanese organic products to be marketed in the U.S. The goal of
32 organic equivalence arrangements is to reduce trade barriers by eliminating a redundant
33 certification process for exports that have already been certified as organic in the originating
34 country.
35

36 Until 2011, it was not possible to track imports and exports of organic products using
37 HTS codes. Organic products did not have unique HTS codes that separately coded organic
38 products, distinct from their conventional counterparts. The U.S. International Trade
39 Commission (ITC) released the first HTS codes for organic products in 2011. Since then, the
40 Organic Trade Association has been working with ITC, and the other agencies involved with

³⁰ Organic Trade Association Unified Export Strategy Survey 2015.

³¹ Organic Trade Association 2005-2013 Industry Survey

³² National Organic Program, *Information for International Trade Partners*, USDA (Last Modified June 30, 2014),
available at

<http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateJ&navID=InternationalTradePartnersNOPACAs&rightNav1=InternationalTradePartnersNOPACAs&topNav=&leftNav=NationalOrganicProgram&page=NOPInternationalAgreements&resultType=&acct=nopgeninfo>.

1 issuing HTS codes, to increase the number of unique HTS codes for organic products. To date,
2 there are 76 unique import and export codes for organic products. Since new HTS codes are
3 constantly being added, it can be difficult to compare trade data from year to year using the HTS
4 codes.³³ Until there are HTS codes for all organic products, monitoring trade statistics by their
5 HTS codes gives only a partial view of the volume of organic products imported and exported.
6

7 Despite the limitations in monitoring organic trade by HTS codes, it is worth noting what
8 is currently being tracked via HTS codes. For the products tracked, U.S. organic exports
9 measured approximately \$553 million, and organic imports measured just under \$1.3 billion in
10 2014.³⁴ The top organic imports in 2014 in value were coffee, soybeans, bananas, olive oil,
11 wine, honey, almonds, avocados, corn, and apples.. Organic imports arrived from nearly 100
12 countries in 2014, with Mexico (\$132.2 million), Italy (\$128 million), Peru (\$99.5 million), India
13 (\$88.1 million), Spain (\$77.3 million), Brazil (\$72.2 million), China (\$64.9 million), Canada
14 (\$53.8 million), Argentina (\$51.7 million), and Indonesia (\$50.8 million) topping the list. The
15 top ten countries accounted for approximately 65 percent of the value of organic imports in 2014.
16 The U.S. exported organic products to over 80 countries. The overwhelming majority of U.S.
17 exports go to its NAFTA partners, Canada and Mexico (78 percent). The primary export
18 markets for U.S. organic products in 2013 were Canada (\$264 million), Mexico (\$167 million),
19 Japan (\$27 million), Taiwan (\$16 million), Australia (\$12 million), United Kingdom (\$9.5
20 million), Hong Kong (\$7.7 million), United Arab Emirates (\$7.7 million), South Korea (\$4.7
21 million), and Singapore (\$3.6 million). The top organic exports were apples, lettuce, grapes,
22 spinach, strawberries, carrots, cauliflower, coffee, tomato sauce, and pears.³⁵
23

24 f. Global Market

25 According to the latest data on organic farming and sales released in February at
26 BioFach, the global organic market in 2013 reached \$72 billion, led by the U.S. market with
27 sales of \$35.1 billion. Germany was next, with \$8.6 billion, followed by France, with \$5 billion.
28 China, who reported official market statistics for the first time, logged in with \$2.73 billion in
29 sales.³⁶
30

31 Two million organic producers—a new high—were reported worldwide in 2013. The
32 countries with the largest numbers of producers were India, Uganda, and Mexico. Meanwhile, a
33 total of 106.5 million acres were organic at the end of 2013, up almost 14.8 million acres
34 compared to the previous year. In Oceania, organic land increased by 42 percent, mainly due to
35 rangeland areas shifting to organic production in Australia. Australia has the largest organic
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³³ Organic Trade Association, *Trade Data*, (last updated February 5, 2015), available at <http://ota.com/what-ota-does/global-market-opportunities/trade-data>.

³⁴ Department of Commerce, U.S. Census Bureau; Foreign Trade Statistics; USDA-FAS Trade Database, <http://apps.fas.usda.gov/gats/default.aspx>.

³⁵ Department of Commerce, U.S. Census Bureau; Foreign Trade Statistics; USDA-FAS Trade Database, <http://apps.fas.usda.gov/gats/default.aspx>.

³⁶ Helga Willer and Julia Lernoud (Eds.), *The World of Organic Agriculture: Statistics and Emerging Trends 2015*, FiBL-IFOAM Report. Research Institute of Organic Agriculture (FiBL), Frick, and IFOAM – Organic International, Bonn, see p. 24 – Summary, available at <https://www.fibl.org/fileadmin/documents/shop/1663-organic-world-2015.pdf>.

1 agricultural area (42.5 million acres, with 97 percent used as grazing), followed by Argentina
2 (7.9 million acres) and the U.S. (5.4 million acres).³⁷

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4 **II. Program Justification**

5
6 a. What research and marketing problems exist?

7
8 The American organic industry is relatively young, with a national standard set forth by
9 the U.S. Department of Agriculture (USDA) in 2002. Despite the newness of the industry, it has
10 experienced rapid growth with organic sales increasing by double digits annually in recent years.
11 U.S. organic sales exceeded \$39 billion in 2014.³⁸ The rapid growth of the U.S. organic industry
12 has given rise to unique challenges that need to be addressed in order for the industry to sustain
13 and continue its current growth. The GRO Organic Program would help to address such
14 challenges as domestic supply shortages, viable pest management options, and market confusion.

15
16 (i) Supply shortages

17
18 Supply shortages in the U.S. organic industry is one of the greatest challenges facing the
19 industry today. Despite the continued growth in organic production, organic handlers are not
20 able to keep up with demand, which has grown at an even faster rate than production. According
21 to a 2004 USDA Economic Research Service (ERS) report, “44 percent of organic handlers
22 reported short supplies of needed ingredients or products” and “13 percent were unable to meet
23 market demand for at least one of their organic products that year.”³⁹ In addition, 52 percent of
24 organic companies said that “a lack of dependable supply of organic raw materials has restricted
25 their company from generating more sales of organic products.” Organic food sales currently
26 make up four percent of total food sales, while acreage devoted to organic agriculture is less than
27 one percent of total U.S. cropland (see Graph 3).

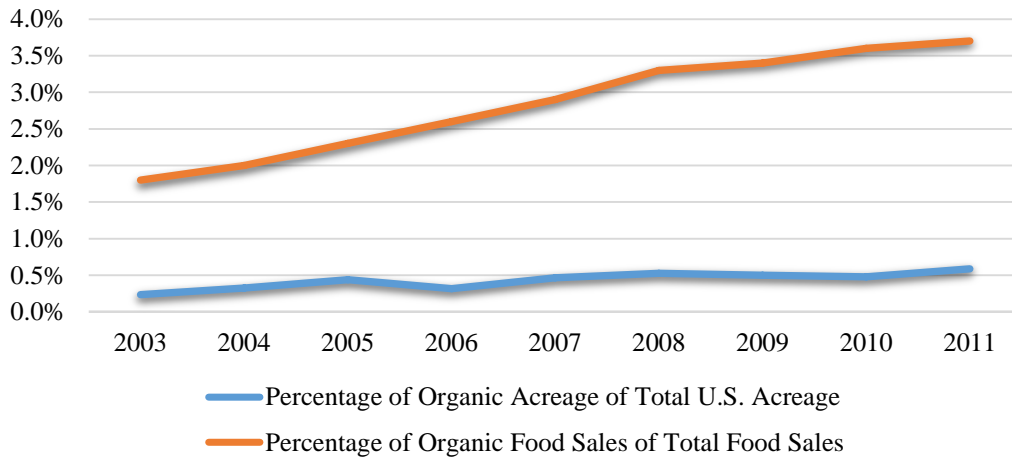
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³⁷ Ibid.

³⁸ Catherine Greene, *Organic Agriculture*, Economic Research Service, USDA (last modified April 07, 2014), see *Overview*, available at <http://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture.aspx>. See also OTA’s 2015 Organic Industry Survey.

³⁹ Catherine Greene, Carolyn Dimitri, Biing-Hwan Lin, William McBride, Lydia Oberholtzer, and Travis Smith, *Emerging Issues in the U.S. Organic Industry*, Economic Research Service, USDA (June 2009), p. iii, available at http://www.ers.usda.gov/media/155923/eib55_1_.pdf.

Graph 3: Organic Acreage vs Sales



Note: 2009 organic acreage was calculated from the average of 2008 and 2010.

Source: USDA, Economic Research Service, based on information from USDA-accredited State and private organic certifiers and Organic Trade Association's 2014 Organic Industry Survey conducted 1/27/2014 – 4/5/2014.

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There is a three year transition period to convert conventional farmland into organic farmland. During the transition period, the farm must adhere to all organic practices, but it is not allowed to use the organic seal on products grown on that land during transition. The transition period can be challenging, because the farm internalizes the increased production cost of an organic farm without receiving the price premium and, depending of the size and existing practices of the farm, may need to make dramatic changes to farming techniques. There are several USDA programs (e.g. Environmental Quality Incentives Program (EQIP), National Institute of Food and Agriculture (NIFA), and Natural Resources Conservation Service (NRCS)) that are designed to assist farms in the transition process, but offer only limited support. In order to increase organic production to keep up with demand, more is needed to assist farmers as they transition to organic agriculture. Programs educating farmers on the certification process, the organic label, and organic farming techniques will help encourage farmers to transition to organic and help them during the transitional period.

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There has been increasing news coverage of the organic supply shortage. *Bloomberg* recently wrote about the lack of organic farmers and low supplies of organic feed grain that is restraining organic dairy production across the U.S. and causing “severe shortages in the organic dairy aisle.”⁴⁰ The lack of domestic organic barley farmers, in addition to weather problems, is forcing brewers to increase prices and import more expensive foreign organic barley as reported in *USA Today*.⁴¹ *Maine’s Public Broadcast News* reported that one of the reasons behind the supply shortage was the lack of farmers willing to transition to organic due to the cost to

⁴⁰ Lydia Mulvany, *Grocery Stores Are Running Out of Organic Milk*, Bloomberg Business (February 9, 2015), available at <http://www.bloomberg.com/news/articles/2015-02-10/not-only-hipsters-cry-when-u-s-grocers-run-out-of-organic-milk>.

⁴¹ Tony Kiss, *Barley Shortages has Craft Beer Makers Foaming*, USA Today (February 3, 2015), available at <http://www.usatoday.com/story/money/business/2015/02/03/beer-barley-shortage/22792533/>.

1 transition and other factors.⁴² *Agri-Pulse* also reported the struggle to meet demand that food
2 manufacturers are facing because not enough farmers are transitioning to organic due to “various
3 financial and regulatory hurdles.”⁴³ Demand for organic eggs is up, but there are not enough
4 U.S. farmers growing organic soybeans and organic corn to feed the organic chickens making
5 organic egg producers cut back on production or buy expensive foreign organic feed as reported
6 by *NPR*.⁴⁴

7
8 The organic industry has identified a growing need to close the gap between U.S. organic
9 production and the demand for organic products. The lack of farmers willing and able to
10 transition to organic has led organic processors and handlers to look abroad to fulfill their orders.
11 Organic milk producers must turn to imports to source enough organic feed for their cattle.⁴⁵
12 The amount of foreign-grown organic products imported into the U.S. demonstrates a need for
13 growth in U.S. organic – which would be supported by a USDA-sanctioned organic research and
14 promotion board.

15
16 (ii) Viable pest management

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18 Conventional and organic farmers face similar challenges in finding the right
19 combination of tools to help protect their products from pests. Just as in conventional farming,
20 organic farming faces very real and imminent threats from invasive species and other types of
21 pests. There was a supply shortage of organic apples across the U.S. in April 2014 due to insect
22 problems and some acreage reduction.⁴⁶ Organic farmers, however, face an even harder battle in
23 developing an effective program of pest management. Not only do organic farmers have to find
24 the right combinations of techniques and substances, the pool of available substances is limited.
25 Organic farmers are limited to the substances that are approved in the National List of Allowed
26 and Prohibited Substances (National List), which includes limited approved pest management
27 strategies.

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29 The National Organic Standards Board (NOSB) maintains the National List. The NOSB
30 reviews every substance on the list every five years. The NOSB also reviews petitions from
31 individuals and organizations to add, remove, or change a listed substance and makes
32 recommendations based on those petitions to the USDA twice a year.⁴⁷ The list has been fine-
33 tuned several times since its creation in 2002. Several substances that were once allowed are
34 now prohibited in an effort to improve the list and limit the number of synthetic substances

⁴² Jennifer Mitchell, *Organic Milk Scarce on Maine Store Shelves as Demand Outstrips Supply*, MPBN News (January 15, 2015), available at <http://news.mpbn.net/post/organic-milk-scarce-maine-store-shelves-demand-outstrips-supply>.

⁴³ Aarian Marshall, *Organic Farmers Struggle with Recruiting – and Supply*, *Agri-Pulse* (June 4, 2014), available at <http://www.agri-pulse.com/Organic-farmers-struggle-with-recruiting-and-supply-06042014.asp>.

⁴⁴ Dan Charles, *Chickens That Lay Organic Eggs Eat Imported Food, And It's Pricey*, *NPR* (February 27, 2014), available at <http://www.npr.org/blogs/thesalt/2014/02/26/283112526/chickens-laying-organic-eggs-eat-imported-food-and-its-pricey>.

⁴⁵ Mark Peters, *A Gap in Organic Food Chain*, *The Wall Street Journal* (July 14, 2013), available at <http://www.wsj.com/articles/SB10001424127887324867904578594171667940126>.

⁴⁶ Dan Wheat, *Organic Apples May Run Out Sooner Than Usual*, *Capital Press* (April 8, 2014), available at <http://www.capitalpress.com/Organic/20140408/organic-apples-may-run-out-sooner-than-usual>.

⁴⁷ National Organic Program, *About the National List*, Agricultural Marketing Service, USDA (last modified on February 24, 2015), available at <http://www.ams.usda.gov/AMSV1.0/NOPPetitionedSubstancesDatabase>.

1 allowed in organic production. With the removal of certain substances, organic farmers must
2 reevaluate how to manage particular pests with what remains available to them.
3

4 The transition of organic apples and pears from antibiotic to non-antibiotic fire blight
5 management tools is one example of changing pest management strategies that the GRO Organic
6 Program could help organic producers develop. Antibiotic fire blight management tools were
7 phased out of organic production in late 2014. There is research being done on non-antibiotic
8 fire blight management tools with approved substances, but the final results have not been
9 released. Once the final results are released, it will be some time until they can be translated into
10 actual farming practices.⁴⁸ This gap can leave organic farmers unprotected against some very
11 serious pests. Additional funding for research (via a research and promotion board) could help
12 farmers during these gaps, and could anticipate changes to the list so that alternative farming
13 techniques can already be in place when a substance is phased out.
14

15 Most current funding for organic research is devoted to researching prohibited
16 substances. There is a lack of funding for research devoted to helping organic farmers develop
17 practices for current and possible future pest management issues, such as citrus greening. There
18 is no strategy, either conventional or organic, that has proven to be 100 percent effective at
19 treating or preventing the spread of citrus greening. Application of synthetic pesticides,
20 however, has been mandated as an eradication method in California without any organic
21 alternative, leaving organic growers in a predicament.⁴⁹ Organic citrus growers need viable
22 alternatives to the synthetic pesticides used in the conventional treatment of citrus greening and
23 other pest issues. The Organic Agriculture Research and Extension Initiative (OREI), which is
24 administered by the National Institute of Food and Agriculture, helps organic farmers develop
25 pest management strategies, but the funding is limited, not exclusive to pest management, and
26 requires recipients to contribute matching funds or in-kind support.⁵⁰ More funding is needed to
27 research better and more effective pest management techniques and applications for organic
28 agriculture – and that could be accomplished through GRO Organic.
29

30 Moreover, it is important to note that many federal research grant dollars are only
31 available to projects that can promise matching funds – and GRO Organic could serve as a
32 source of such funds, increasing access to federal dollars and increasing the reach of every dollar
33 allocated to research.
34

35 (iii) Market confusion 36

37 According to Consumer Reports, 84 percent of U.S. consumers buy organic foods
38 sometimes, and 45% buy them at least once a month, but there's a disparity between what the

⁴⁸ Harold Ostenson and David Granatstein, *Critical Issue Report: Fire Blight Control Programs in Organic Fruit*, The Organic Center (November 2013), see page 4.

⁴⁹ The Organic Center, *Organic Solutions for Citrus Greening* (last modified June 24, 2014), available at <http://organic-center.org/citrus-research/savecitrus/>.

⁵⁰ National Institute of Food and Agriculture, *Organic Agriculture Research and Extension Initiative: 2014 Request for Applications*, see p. 14, available at http://www.nifa.usda.gov/funding/rfas/pdfs/14_OREI.pdf.

1 seal means and what consumers think it means.⁵¹ The Natural Marketing Institute issued a report
2 stating that most consumers “don’t know what the characteristics or regulations of organics are,
3 they are unclear about the benefits, or they easily confuse it with natural.”⁵² The number of
4 labels in the market today contributes to consumer confusion. Much like how the market was
5 prior to a federal standard, there is confusion among the varying labels. One of the driving
6 forces to developing a federal standard was the problem that the conflicting standards pose to
7 consumers. Today, there is an ever increasing number of labels that may be used on packaging
8 (e.g. Natural, Local, non-GMO, etc.).
9

10 A number of articles from major news agencies emphasize the problem of consumer
11 confusion facing the market today. *ABC News* released an article on how several labels in the
12 market, including “natural,” mislead consumers about what is actually in their products.⁵³
13 *Forbes* covered a report showing the organic label to be one of the most confusing labels in the
14 market due to the rapid growth in organic demand and not enough public education on the
15 label.⁵⁴ *The New York Times* showed that more choices on food labels has increased the
16 confusion about what all of the labels mean.⁵⁵
17

18 The vast majority of surveyed shoppers expect standards for “natural” to be comparable
19 to “organic.” And yet, “natural” foods fall significantly short of consumer expectations, and
20 unlike “organic,” “natural” isn’t required to be verified. For example, to be labeled “natural”
21 meat, the only requirement is that nothing artificial was added to the cut of meat. For other foods,
22 the claim is essentially meaningless.
23

24 In addition, researchers surveyed consumers across the U.S. and Canada and discovered
25 that 17 percent of the people they spoke with incorrectly believed that foods labelled “organic”
26 were also grown locally. Another 23% falsely believe that local produce is grown organically.⁵⁶
27 Consumers also do not understand that organic products are produced without genetically
28 modified organisms (GMOs). This creates a unique labeling question as to whether a handler
29 should include both the organic seal and a non-GMO label to communicate to consumers that the
30 product is non-GMO, even though the organic seal alone would be sufficient.⁵⁷
31

⁵¹ National Research Center, *Organic Food Labels Survey*, Consumer Reports (March 2014), p. 3, available at <http://www.greenerchoices.org/pdf/CR2014OrganicFoodLabelsSurvey.pdf>.

⁵² Natural Marketing Institute, *2015 Growing the Organic Industry, Strategies for Brand Success* (February 2015), available at <http://www.nmisolutions.com/index.php/research-reports/health-a-wellness-reports/2015-growing-the-organic-industry-strategies-for-brand-success>.

⁵³ David Kerley, ‘Natural’ vs ‘Organic’: How Food Labels Deceive, *ABC News* (February 17, 2014), available at <http://abcnews.go.com/blogs/lifestyle/2014/02/natural-vs-organic-how-food-labels-deceive/>.

⁵⁴ Beth Hoffman, ‘Organic’ One of the Most Confusing Labels, Report Says, *Forbes* (July 17, 2014), available at <http://www.forbes.com/sites/bethhoffman/2013/07/17/organic-causes-confusion/>.

⁵⁵ Kim Severson, *More Choice, and More Confusion, in a Quest for Healthy Eating*, *The New York Times* (September 8, 2012), available at <http://www.nytimes.com/2012/09/09/us/would-be-healthy-eaters-face-confusion-of-choices.html?pagewanted=all>.

⁵⁶ For more information see: Hannah Goldberg, *People Still Don’t Know the Difference Between “Organic” and “Local”*, *Time* (July 11, 2014), available at <http://time.com/2970505/organic-misconception-local/>.

⁵⁷ For more information see: Stephanie Strom, *Many G.M.O.-Free Labels, Little Clarity Over Rules*, *The New York Times* (January 30, 2015), available at <http://www.nytimes.com/2015/01/31/business/gmo-labels-for-food-are-in-high-demand-but-provide-little-certainty.html?ref=topics& r=0>.

1 The only standard with a clear definition is the USDA organic label. The USDA organic
2 label on foods is meaningful and meets consumer expectations – as long as it is explained to
3 consumers. It is backed by federal regulations which encourage sustainable farming practices
4 and restrict the use of synthetic substances in farming and processing - GMOs, synthetic
5 fertilizers and sewage sludge are prohibited. The label is verified through annual third-party
6 inspections by USDA-accredited certifying agencies.
7

8 New organic families - those who only began purchasing organic products in the past two
9 years - consistently account for between thirty and forty percent of American families. In 2014,
10 34 percent fell into this category.⁵⁸ This means that for organic to succeed in the long term, the
11 industry must continually invest in educating consumers who are new to organic on what the
12 label means. Through a research and promotion program, the organic industry will educate those
13 who are unaware of the benefits of organic products, as well as clear up confusion among
14 consumers regarding what it means for food to be “organic” – as compared to unregulated
15 “natural” products and other eco-claims in the marketplace. These other non-organic claims
16 confuse the everyday consumer and there is a strong need for a clear, unified message across the
17 entire industry to relay the organic message. The NOP does a great job at ensuring the organic
18 standard maintains its level of integrity. It has emerged as a strict regulator and enforcement arm
19 for the organic industry – but it will never fill the role of educator, marketer, or promoter.
20

21 The GRO Organic Program proposes an assessment rate of one-tenth of one percent of
22 net organic sales. (“Net Organic Sales” is defined as total gross sales of organic products minus
23 the cost of certified organic ingredients, feed, and inputs used in the production of organic
24 products.)⁵⁹ The assessment is anticipated to generate over \$35 million for the GRO Organic
25 Board.⁶⁰ This assessment is vital to the long-term success of the industry so that the resources of
26 the diverse organic community can be pooled together to solve the problems faced at the
27 farmgate, in the research labs and test fields, and in the minds of the consumers.
28

29 It is important to note that promotion and education can increase consumer appreciation
30 of products in the marketplace, in addition to the traditional role of increasing demand.
31 Increased consumer understanding of the benefits of organic will lead to increased appreciation
32 for the value of organic products, even among those who are already organic consumers.
33

34 b. What alternatives were considered and why were they rejected?
35

36 The Organic Trade Association and the GRO Organic Core Committee considered
37 several possible options in lieu of a research and promotion program including the following: a
38 voluntary trade association promotion program; a federal marketing order or agreement
39 (pursuant to the Agricultural Marketing Agreement Act of 1937, as amended)⁶¹; and encouraging

⁵⁸ The Organic Trade Association, *2014 U.S. Families’ Organic Attitudes and Beliefs Study* (April 2014), available at <https://ota.com/what-ota-does/market-analysis/consumer-attitudes-and-beliefs-study>.

⁵⁹ United for More Organic, *Organic Check-off Preamble (Version 3.0)*, Organic Trade Association (Last accessed February 4, 2015), available at <http://www.unitedformoreorganic.com/research-promotion-program/organic-research-and-promotion-program-preamble/>.

⁶⁰ This is based upon data from the 2012 U.S. Census of Agriculture, Characteristics of All Farms and Farms with Organic Sales (NASS, USDA), Issued September 2014.

⁶¹ 7 U.S.C. § 600.

1 each individual organic crop to have its own research and promotion program. An organic
2 research and promotion program is the only option that meets the needs of the organic industry in
3 an administratively efficient manner with all benefiting parties paying their fair share.
4

5 The Organic Trade Association and the GRO Organic Core Committee considered a
6 voluntary generic research and promotion program that would be implemented through the trade
7 association itself. This would have been to provide invasive pests and weed control research,
8 educate consumers, research the benefits of organic products, assist in crisis management, and
9 promote and market certified organic products. However, the financial cost of such a program
10 would be prohibitive without the full and strong support of all certified organic product handlers.
11 In addition, imported organic products could receive a disproportionate benefit from a voluntary
12 research and promotion program.⁶²
13

14 A federal marketing order or agreement was also considered. Unfortunately, unlike
15 research and promotion orders, the law governing federal marketing orders limits the program's
16 benefits to a particular commodity, rather than a set of production practices. A further
17 impediment of a federal marketing order is the requirement that limits the assessment to the
18 handler in the production area. Any organic product leaving the geographic production area
19 would not be assessed at the next step in the value chain. Another restriction is the inability to
20 assess imports under a federal marketing order.
21

22 Another alternative considered was to encourage each organic crop to have its own
23 research and promotion program; however this could lead to thousands of organic research and
24 promotion programs. To have a research and promotion program for each organic food entity
25 would be a never-ending task. Furthermore, the waste in duplication among the thousands of
26 food items would be enormous. The Perishable Agricultural Commodities Act list provides an
27 excellent example of the sheer volume of commodities that this would encompass. The
28 Agricultural Marketing Service has a 50-page list of fruits and vegetables, and this does not
29 include tree nuts.⁶³ Moreover, a national organic research and promotion program will benefit
30 all organic products and consumers. Every state in the nation participates in the full value-chain
31 of the organic industry, both food and non-food, including production, packaging, processing,
32 shipping, and distribution. Despite the differences among products, all organic products share
33 similar needs due to their connection through the USDA organic label.
34

35 The Organic Trade Association and the GRO Organic Core Committee received a
36 suggestion to use the Sustainable Agriculture Research and Education Program (SARE) to house
37 a research and promotion program. However, SARE is a federally-funded program and therefore
38 is not a vehicle that can legally be used for pooling of private sector (industry) dollars.
39

⁶² Should imports free-ride or help pay—decisions about generic promotion programs for agricultural commodities
<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&ved=0CEUQFjAF&url=http%3A%2F%2Fpageconsearch.umn.edu%2Fbitstream%2F34277%2F1%2F03020227.pdf&ei=WufQVK-SHIudNvb4g4AH&usg=AFQjCNFcNznHsnnOncZjStN9m-zYWOKIsg&sig2=Sbadq6afmawOOSDIPxXI8g&bvm=bv.85076809.d.eXY>

⁶³ PACA Commodities List <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5082566>

1 The Organic Trade Association and the GRO Organic Core Committee also considered
2 numerous alternative ideas within the context of a research and promotion program. The
3 following ideas from agricultural commodity groups were considered, but not included in the
4 proposal, because they either were not supported by organic stakeholders, or they were not
5 allowed under the Generic Act:
6

- 7 • Mandatory assessment of all covered certified organic producers. Some state
8 chapters of National Farmers Union (NFU) in particular have called for removal
9 of the \$250,000 threshold for mandatory assessment, and assessment of all.
10 (Those chapters include New England Farmers Union, Wisconsin Farmers Union,
11 Pennsylvania Farmers Union, Kansas Farmers Union, and California Farmers
12 Union.) In response to those chapters' input, the Organic Trade Association and
13 the GRO Organic Core Committee reached out to 2,000 organic producers who
14 indicated that they fall under the \$250,000 threshold, to get feedback on potential
15 assessment models and their governance implications. The Organic Trade
16 Association and the GRO Organic Core Committee received responses from over
17 1,200 of those "small" producers through phone surveys and postcards. Only
18 thirteen percent of the 1,200 respondents favored the removal of the \$250,000
19 threshold; as such, the proposal was rejected. The application does not assess
20 covered producers whose Gross Organic Revenue is below \$250,000, but it does
21 offer them the opportunity to participate voluntarily at the same one-tenth of one
22 percent of Net Organic Sales assessment rate, and receiving all voting and
23 governance rights.
24
- 25 • Apportionment of producer Board seats by category of production, rather than
26 region. Western Growers Association in particular has called for apportionment
27 of producer Board seats by category – produce, dairy, livestock, etc. – rather than
28 by geographic region. However, the Generic Act requires that the composition of
29 the Board reflect the geographic distribution of organic production in the United
30 States (see 7 U.S.C. 7415(b)(2)(D)). Given that statutory requirement, the GRO
31 Organic Core Committee determined that regional apportionment was the best
32 approach. However, the proposal does take this idea into account, and encourages
33 the Secretary to consider sector diversity in his appointment of Board members.
34
- 35 • More Board seats dedicated to producers. Some state chapters of National
36 Farmers Union (NFU) in particular have called for the Board to be composed of
37 100% producers. (Those chapters include New England Farmers Union,
38 Wisconsin Farmers Union, Pennsylvania Farmers Union, Kansas Farmers Union,
39 and California Farmers Union.) However, this is not in line with the full value
40 chain research and promotion order proposal submitted. The GRO Organic
41 proposal assesses along the entire value chain – unlike other research and
42 promotion orders – and therefore Board membership must represent all entities
43 assessed. However, it remains important to the GRO Organic Core Committee
44 that producers have a strong voice. Therefore, despite the fact that analysis
45 indicates that producers are likely to pay in approximately 20% of the total
46 assessments – the proposal makes them eligible for over 50% of the Board seats.

1
2 The following ideas from regional organic agriculture groups were considered, but not
3 included in the proposal, because they either were not supported by a majority of organic
4 stakeholders, or they were not allowed under the Generic Act:
5

- 6 • Voting by entities not assessed. Northeast Organic Dairy Producers Association
7 (NODPA) and the Ohio Ecological Food and Farming Association (OEFFA) have
8 suggested that all certified organic entities, regardless of whether they are
9 assessed, should be allowed to vote. However, this would not be allowed under
10 the Generic Act – section 7418 of that law indicates that only assessed entities
11 may be granted voting rights. To ensure as broad participation in governance as
12 possible, we have redrafted the approach to small operations to be a voluntary
13 assessment – so any small operation that chose to be assessed would be granted
14 all voting and governance rights. Moreover, fairness dictates that all those – and
15 only those – who are assessed control the use of the funds.
16
- 17 c. How much income could the program expect to generate at the optimum
18 assessment rate?
19

20 The GRO Organic Board could expect to generate over \$30 million in income from
21 U.S. organic operations at the optimum assessment rate. The proposed assessment rate is one-
22 tenth of one percent of Net Organic Sales (i.e. total gross organic sales minus the cost of certified
23 organic goods). This will apply to all assessed organic organic handlers, and importers of
24 organic products. Small farms, with gross organic revenue of less than \$250,000 annually,
25 would be covered but not assessed, and would have the option of not paying in, or paying a
26 voluntary assessment of the same one-tenth of one percent of Net Organic Sales. (“Gross
27 Organic Revenue” is defined as total gross sales in organic products.) Producers, both
28 mandatorily and voluntarily assessed entities, will have the option to have the assessment taken
29 from either Net Organic Sales or Producer Net Profit (i.e. organic producer income from organic
30 products less the associated production expenses excluding fixed non-cash costs).
31

32 In order to administer the program, all mandatory organic certificate holders throughout
33 the supply chain, including producers, handlers, brand manufacturers, co-packers, and importers,
34 with Gross Organic Revenue in excess of \$250,000 per year, would be subject to a mandatory
35 organic check-off assessment. Because of the complexity and diversity of the organic value
36 chain, the Organic Trade Association and the GRO Organic Core Committee determined that the
37 assessment rate would be a value-added model that would assess one-tenth of one percent of Net
38 Organic Sales. For example, there would be a \$300 assessment at \$300,000 Net Organic Sales
39 and a \$3,000 assessment at \$3,000,000 Net Organic Sales. The graphics below provide a good
40 depiction of how the assessments will be determined.
41
42
43

How does it work for PROCESSORS?

ORGANIC HANDLERS would pay one-tenth of one percent of Net Organic Sales.

The assessment would be based on the total gross sales minus the cost of certified organic goods. For processors this would be the cost of certified organic ingredients.



Net Organic Sales \times 1/10th of 1% $=$ Value Added Assessment

For example, an apple juice manufacturer would be assessed on total juice sales less the cost of organic apples.

How does it work for PRODUCERS?

ORGANIC PRODUCERS would choose either Net Organic Sales OR Producer Net Assessment

Producers could pay one-tenth of one percent of **Net Organic Sales**. The assessment would be based on the total gross sales minus the cost of certified organic goods.



Net Organic Sales \times 1/10th of 1% $=$ Value Added Assessment

For producers, this would be items such as organic feed, seed and planting stock. For example, a milk producer would be assessed on total bulk milk sales less the cost of feed corn and hay.

- OR -

Producers could pay one-tenth of one percent of **Producer Net Profit**. Producer net profit is organic producer income received from organic products less the associated production expenses excluding fixed non-cash costs.



Producer Net Profit \times 1/10th of 1% $=$ Producer Net Profit Assessment

1
2
3

1 d. How much would it cost to administer the program, including Government
2 reimbursements (user fees)?
3

4 The GRO Organic Program has set a cap of 15 percent on administrative expenses.
5 During the first 3 years, administrative costs would not exceed that limit.
6

7 This cap would also apply to any organization (e.g. a research university) that receives
8 funding from the GRO Organic Program. Government reimbursements are not expected to
9 exceed \$350,000 annually.
10

11 e. After program administration costs are paid, how much funding would remain to
12 finance the program?
13

14 It is estimated that the funds remaining after program administration costs are paid would
15 be \$25.5 million.
16

17 f. Could an effective research and promotion program be conducted with the
18 remaining funds?
19

20 The 2014 Farm Bill allocated \$167.5 million for organic programs over five years, which
21 amounts to roughly \$33.5 million per year.⁶⁴ This money includes funding for certification
22 assistance (\$11.5 million per year), economic data research and database upgrade (\$2 million per
23 year), and organic agriculture research and extension funding (\$20 million per year).⁶⁵ The GRO
24 Organic Board will have comparable funds to these Farm Bill programs. The Organic Trade
25 Association and the GRO Organic Core Committee are confident that an effective research and
26 program could be conducted with the remaining funds.
27

28 **III. Program Objectives**

29

30 The assessed funds would be dedicated to promoting organic goods and researching
31 solutions to problems facing the organic industry. Initial goals of the program are to educate
32 consumers about what organic is and its benefits, distinguish organic from other claims and
33 unregulated seals like “natural”, confirm the science behind the environmental and public health
34 benefits of organic, undertake research to solve problems such as invasive pests and weed
35 control, and bring new farmers into organic production through information and technical
36 assistance.
37

38 For a more detailed account of the program objectives addressed by the GRO Organic
39 Program see Section II(a).
40

41 **IV. Impact on Small Business**

42

⁶⁴ Catherine Greene, *Organic Agriculture*, Economic Research Service, USDA (last modified April 07, 2014), see *Farm Act-Organic Provisions*, available at <http://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture/farm-act%E2%80%9494organic-provisions.aspx>.

⁶⁵ Ibid.

1
2 The GRO Organic Program will impose minimal compliance requirements on small
3 businesses. Organic producers, handlers, and importers with Gross Organic Revenue of less than
4 \$250,000 in the last fiscal year will not be assessed. They will have the option to participate in
5 the program as a voluntarily assessed entity by remitting an assessment of one-tenth of one
6 percent of their Net Organic Sales, which will allow them to request a ballot to vote in any
7 program referendums. Instructions on dates, places, method of voting, eligibility requirements,
8 and other pertinent information will be made available to organic producers, handlers, and
9 importers who wish to voluntarily contribute through media and public information sources. By
10 casting a vote, they agree to voluntarily pay into the program for seven years.

11
12 The Regulatory Flexibility Act (“RFA”) requires federal agencies to consider and analyze
13 the impact of regulatory proposals on small businesses. In determining the threshold for a “small
14 business” the RFA uses the definition set forth by the Small Business Administration (“SBA”),
15 which defines as a small agricultural producer as those having annual receipts less than
16 \$750,000.⁶⁶ The Organic Trade Association and the GRO Organic Core Committee estimate that
17 there are XX number of organic producers, handlers, and importers that meet the regulatory
18 threshold as set forth by the SBA and are subject to assessment. The reporting requirements of
19 for all entities, including small businesses, will be the quarterly assessment reports. Voluntarily
20 assessed entities will have an additional form when they opt-in to the program. All of the
21 reporting requirements can be completed by any employee with basic bookkeeping experience.

22
23 It is anticipated that many of these entities maintain their records electronically and have
24 a person on staff to operate and manage their computer system. The only costs that would be
25 incurred by these entities in complying with the requests under the GRO Organic Program would
26 be the labor hours required to retrieve the pertinent information from the computer system and
27 transmit it electronically to the Board. We estimate the time required to complete these tasks to
28 be one hour per respondent at a cost of \$20 per hour.

29
30 For those entities that rely on an outside contractor to manage their computer system,
31 there may be a one-time fee incurred for having the contractor retrieve the necessary information
32 from the system and transmit it electronically to the Board. We estimate the time required to
33 complete this task to be two hours per respondent at a cost of \$50 per hour. For those entities
34 that do not maintain their records electronically, it is anticipated that such entities would review
35 their paper records, compile the necessary information, and submit it to the Board via facsimile
36 or mail. We estimate the time required to complete this task to be four hours per respondent at a
37 cost of \$20 per hour.

38
39 The Organic Trade Association and the GRO Organic Core Committee are not aware of
40 any federal rules that duplicate, overlap, or conflict with the proposed program.

41 42 **V. Industry Support**

43
44 The Organic Trade Association and the GRO Organic Core Committee facilitated
45 preliminary discussions in the organic sector to determine whether there is a need for an organic

⁶⁶ 13 CFR § 121.201

1 promotion and research order. The Organic Trade Association and the GRO Organic Core
2 Committee facilitated six webinars, three panel debates, and twenty town hall meetings in 2012
3 and 2013. Locations of these town halls included Vermont, the District of Columbia, Florida,
4 Ohio, Wisconsin, California, Oregon, Montana, Washington, Minnesota, Rhode Island, and New
5 Mexico; 540 individuals participated in these events. Additionally three panel debates were held
6 in Vermont, Washington, and Wisconsin.⁶⁷ In 2014 and 2015, members of the Organic Trade
7 Association staff and the GRO Organic Core Committee continued to capture as much input as
8 possible from the organic community. They traveled across the country staffing booths,
9 participating in panels, and holding listening sessions at a number of organic gatherings
10 including Natural Products Expo East (Maryland), Western Organic Dairy Producers Alliance
11 Conference (California), Tilth Producers of Washington Conference (Washington), Washington
12 State Horticulture Association Annual Meeting (Washington), Montana Organic Association
13 Conference (Montana), Pennsylvania Farmers Union Annual Convention (Pennsylvania), New
14 England Farmers Union Annual Convention (Maine), Minnesota Department of Agriculture
15 Organic Conference (Minnesota), GS Long's Organic Growers Meeting (Washington), EcoFarm
16 (California), Organicology (Oregon), CCOF Annual Meeting (California), Midwest Organic &
17 Sustainable Education Service Conference (Wisconsin), Natural Products Expo West
18 (California), CROPP Cooperative Annual Meeting (Wisconsin), Juice Product Association
19 (Virginia), and OTA events in Vermont, Colorado and Washington, DC.

20
21 Two rounds of quantitative assessment have been completed. In late spring and summer
22 of 2014, the Organic Trade Association and the GRO Organic Core Committee engaged in direct
23 outreach to ALL organic certificate holders across the United States. The outreach utilized the
24 USDA list of certified operations and was NOT limited to members of the Organic Trade
25 Association.

26
27 In late May and June, 17,500 organic operations (producers and handlers) received a
28 direct mail brochure and postcards with information on the emerging framework for an organic
29 research and promotion order. A total of 1,004 responded to a phone survey. In August 2014,
30 based on feedback from the first survey, the Organic Trade Association and the GRO Organic
31 Core Committee completed an updated informational direct mailing to 11,000 organic operations
32 with a follow-up survey. An additional 2,706 phone surveys were completed.

33
34 Of those responding, twice as many certified operators supported the establishment of an
35 organic research and promotion order as opposed the establishment of an organic research and
36 promotion order. The completed surveys constitute a statistically representative sample with
37 11.3% of crop certificate holders, 12.6% of livestock certificate holders, and 8.2% of handling
38 certificate holders completing the survey. These discussions and feedback demonstrate general
39 consensus of a need and desire for the GRO Organic Program.

40 There were two organizations that formally opposed the order via direct written
41 communication with OTA outlining a formal organizational position in opposition: the Northeast
42 Dairy Producers Association and Organic Farmer Agency for Relationship Marketing.⁶⁸ Full

⁶⁷ United for More Organic, *Organic Check-off Preamble (Version 3.0)*, Organic Trade Association (Last accessed February 4, 2015), available at <http://www.unitedformoreorganic.com/research-promotion-program/organic-research-and-promotion-program-preamble/>.

⁶⁸ Ibid.

1 consideration of the alternative ideas put forward can be found in the “alternatives considered”
2 section beginning on page 13 above.
3

4 There was some discussion as to whether a USDA research and promotion order was the
5 best possible choice for funding this program, or whether a voluntary option would be better.
6 Additional discussion raised the Sustainable Agriculture Research and Education Program as an
7 alternative. However, the funding mechanism of SARE is not compatible with the goals of the
8 organic industry. Because of the diversity of the organic value chain, many commenters at the
9 town hall meetings indicated that they did not see a good alternative to a research and promotion
10 order that would encompass the many aspects of the organic industry equitably.
11

12 As noted above, one issue that has attracted significant attention is whether all covered
13 certified organic produces should be assessed, or only those whose Gross Organic Revenue
14 exceeds \$250,000. In response to this, the Organic Trade Association and the GRO Organic
15 Core Committee reached out to 2,000 organic producers who indicated that they fall under the
16 \$250,000 threshold, to get feedback on potential assessment models and their governance
17 implications. The Organic Trade Association and the GRO Organic Core Committee received
18 responses from over 1,200 of those “small” producers through phone surveys and postcards.
19 Only thirteen percent of the 1,200 respondents favored the removal of the \$250,000 threshold; as
20 such, the proposal was rejected. The application does not assess covered producers whose Gross
21 Organic Revenue is below \$250,000, but it does offer them the opportunity to participate
22 voluntarily at the same one-tenth of one percent of Net Organic Sales assessment rate, and
23 receiving all voting and governance rights.
24

25 The Organic Trade Association and the GRO Organic Core Committee continue to seek
26 input from industry stakeholders and interested parties through online surveys, personal phone
27 calls with GRO Organic Core Committee members and various large and small meetings.⁶⁹
28

29 **VI. Text of the Proposal**

30 **[Proposed Regulations are in a separate file.]**
31
32

⁶⁹ United for More Organic, *Weigh-In*, Organic Trade Association (Last accessed February 4, 2015), available at <http://www.unitedformoreorganic.com/weigh-in/>.

1 **PART 12XX— Generic Research and Promotion Order for Organic**

2
3 **Subpart A— Generic Research and Promotion Order for Organic**

4
5 **DEFINITIONS**

- 6
7 §12XX.1 Act.
8 §12XX.2 Assessed entity.
9 §12XX.3 Board.
10 §12XX.4 Certificate of exemption.
11 §12XX.5 Conflict of interest.
12 §12XX.6 Covered entity.
13 §12XX.7 Customs or CBP.
14 §12XX.8 Department.
15 §12XX.9 Dual-covered commodity.
16 §12XX.10 Fiscal year and marketing year.
17 §12XX.11 Gross organic revenue.
18 §12XX.12 Information.
19 §12XX.13 Net organic sales.
20 §12XX.14 Order.
21 §12XX.15 Organic certificate holder.
22 §12XX.16 Organic handler.
23 §12XX.17 Organic importer.
24 §12XX.18 Organic producer.
25 §12XX.19 Organic product processor.
26 §12XX.20 Organic products.
27 §12XX.21 Part and subpart.
28 §12XX.22 Person.
29 §12XX.23 Producer net profit.
30 §12XX.24 Programs, plans and projects.
31 §12XX.25 Promotion.
32 §12XX.26 Qualified State Commodity Board.
33 §12XX.27 Research.
34 §12XX.28 Secretary.
35 §12XX.29 State.
36 §12XX.30 Suspend.
37 §12XX.31 Terminate.
38 §12XX.32 United States.
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40
41 **GENERIC RESEARCH AND PROMOTION ORDER FOR ORGANIC PROGRAM BOARD**

- 42
43 §12XX.40 Establishment and membership.
44 §12XX.41 Nominations and appointments.
45 §12XX.42 Term of office.
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- 1 §12XX.45 Reimbursement and attendance.
- 2 §12XX.46 Powers and duties.
- 3 §12XX.47 Prohibited activities.

4

5 **EXPENSES AND ASSESSMENTS**

6

- 7 §12XX.50 Budget and expenses.
- 8 §12XX.51 Financial statements.
- 9 §12XX.52 Assessments.
- 10 §12XX.53 Exemption from assessment.
- 11 §12XX.54 Assessment offset.

12

13 **PROMOTION, RESEARCH AND INFORMATION**

14

- 15 §12XX.60 Programs, plans and projects.
- 16 §12XX.61 Independent evaluation.
- 17 §12XX.62 Patents, copyrights, trademarks, inventions, product formulations, and publications.

18

19 **REPORTS, BOOKS, AND RECORDS**

20

- 21 §12XX.70 Reports.
- 22 §12XX.71 Books and records.
- 23 §12XX.72 Confidential treatment.

24

25 **MISCELLANEOUS**

26

- 27 §12XX.80 Right of the Secretary.
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- 32 §12XX.85 Personal liability.
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36

37 **Subpart B—Referendum Procedures**

38

- 39 §12XX.100 General.
- 40 §12XX.101 Definitions.
- 41 §12XX.102 Voting.
- 42 §12XX.103 Instructions.
- 43 §12XX.104 Subagents.
- 44 §12XX.105 Ballots.
- 45 §12XX.106 Referendum report.
- 46 §12XX.107 Confidential information.

47

1 **Subpart A— Generic Research and Promotion Order for Organic**

2
3 **DEFINITIONS**

4
5 **§12XX.1 Act.**

6
7 *Act* means the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411-
8 7425), and any amendments thereto.

9
10 **§12XX.2 Assessed entity.**

11
12 *Assessed entity* means any organic producer, organic handler, or organic importer with gross
13 organic revenue in excess of \$250,000 per marketing year, and any voluntarily assessed entity. Any
14 person that holds multiple organic certificates (i.e. for both production and handling) will be treated as a
15 separate assessed entity for each organic certificate.

16
17 **§12XX.3 Board.**

18
19 *Board* means Generic Research and Promotion Order for Organic Board established pursuant to
20 §12XX.XX, or such other name as recommended by the Board and approved by the Department.

21
22 **§12XX.4 Certificate of exemption.**

23
24 *Certificate of exemption* means a certificate issued by the Board, pursuant to §12XX.53(b), to an
25 organic producer, organic handler or organic importer that produces, handles or imports dual-covered
26 commodities.

27
28 **§12XX.5 Conflict of interest.**

29
30 *Conflict of interest* means a situation in which a member or employee of the Board has a direct or
31 indirect financial interest in a person who performs a service for, or enters into a contract with, the Board
32 for anything of economic value.

33
34 **§12XX.6 Covered entity.**

35
36 *Covered entity* means any mandatory organic certificate holder, organic producer, organic
37 handler, or organic importer.

38
39 **§12XX.7 Customs or CBP.**

40
41 *Customs or CBP* means the U.S. Customs and Border Protection, an agency of the U.S.
42 Department of Homeland Security.

43
44 **§12XX.8 Department.**

45

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

4
5 **§12XX.9 Dual-covered commodity.**

6
7 *A dual-covered commodity* means an agricultural commodity that (i) is produced on a certified
8 organic farm; and (ii) is covered under both -- (I) this Part; and (II) any other agricultural commodity
9 promotion order issued under a commodity promotion law.

10
11 **§12XX.10 Fiscal year and marketing year.**

12
13 *Fiscal year and marketing year* means the 12-month period ending on December 31 or such
14 other period as recommended by the Board and approved by the Secretary.

15
16 **§12XX.11 Gross organic revenue.**

17 *Gross organic revenue* means total gross sales in organic products.

18
19
20 **§12XX.12 Information.**

21
22 *Information* means information and programs for consumers, customers and the organic industry,
23 including educational activities; and information and programs designed to enhance and broaden the
24 understanding of the use and attributes of organic products, increase organic production, support the
25 transition of acres to organic production in the United States, provide technical assistance, maintain and
26 expand existing markets, engage in crisis management, and develop new markets and marketing
27 strategies. These include:

28
29 (a) Consumer education, advertising and information, which means any effort taken to provide
30 information to, and broaden the understanding of, the general public regarding organic products; and

31
32 (b) Industry information, which means information and programs that would enhance the image
33 of the organic industry.

34
35 (c) Information for farmers and technical service providers, which means information related to
36 agronomic practices and certification requirements, and information supporting the transition of acres to
37 organic production in the United States, increasing organic production, direct and local marketing
38 opportunities, export opportunities, and organic research.

39
40 **§12XX.13 Net organic sales.**

41
42 *Net organic sales* means total gross sales in organic products minus the cost of certified organic
43 ingredients, feed, and inputs used in the production of organic products.

44
45 **§12XX.14 Order.**

1 *Order* means an order issued by the Secretary under section 514 of the Act that provides for a
2 program of generic promotion, research, education and information regarding organic products
3 authorized under the Act.

4
5 **§12XX.15 Organic certificate holder.**

6
7 *Organic certificate holder* means a person who is not exempt or excluded from certification
8 pursuant to 7 CFR 205.101 and who holds a valid organic certificate pursuant to 7 CFR 205.400 through
9 7 CFR 205.406.

10
11 **§12XX.16 Organic handler.**

12
13 *Organic handler* means a person who is handling certified organic products in accordance with
14 the requirements specified in 7 CFR 205.101 or 7 CFR 205.270 through 7 CFR 205.272 and all other
15 applicable requirements of this part 205 and receives, sell, consign, deliver, or transport certified organic
16 products into the current of commerce in the United States, the District of Columbia,
17 the Commonwealth of Puerto Rico, or any territory or possession of the United States.

18
19 **§12XX.17 Organic importer.**

20
21 *Organic importer* means any person who imports certified organic products from outside the
22 United States for sale in the United States as a principal or as an agent, broker, or consignee of any
23 person who produces organic products outside the United States for sale in the United States, and who is
24 listed in the import records as the importer of record for such organic products.

25
26 **§12XX.18 Organic producer.**

27
28 *Organic producer* means a person who has produced certified organic products in accordance
29 with the requirements specified in 7 CFR 205.101 or 7 CFR 205.202 through 7 CFR 205.207 or 7 CFR
30 205.236 through 7 CFR 205.240 and all other applicable requirements of part 205.

31
32 **§12XX.19 Organic product processor.**

33
34 *Organic product processor* means a person who has cooked, baked, heated, dried, mixed,
35 grinded, churned, separated, extracted, cut, fermented, eviscerated, preserved, dehydrated, frozen, or
36 otherwise manufactured organic products, and includes the packaging, canning, jarring, or otherwise
37 enclosing organic food in a container.

38
39 **§12XX.20 Organic products.**

40
41 *Organic products* means products produced under the authority of the Organic Foods Production
42 Act of 1990 (7 U.S.C. 6501-6522), and any amendments thereto.

43
44 **§12XX.21 Part and subpart.**

1 *Part* means the Generic Research and Promotion Order for Organic and all rules, regulations,
2 and supplemental orders issued pursuant to the Act and the Order. The Order shall be a *subpart* of such
3 part.

4
5 **§12XX.22 Person.**

6
7 *Person* means any individual, group of individuals, partnership, corporation, association,
8 cooperative, or any other legal entity.

9
10 **§12XX.23 Producer net profit.**

11
12 *Producer net profit* means organic producer income received from organic products less the
13 associated production expenses excluding fixed non-cash costs.

14
15 **§12XX.24 Programs, plans and projects.**

16
17 *Programs, plans and projects* means those research, promotion, and information programs, plans
18 or projects established pursuant to the Order.

19
20 **§12XX.25 Promotion.**

21
22 *Promotion* means any action, including paid advertising and the dissemination of information,
23 utilizing public relations or other means, to enhance and broaden the understanding of the use and
24 attributes of organic products for the purpose of maintaining and expanding markets for the organic
25 industry.

26
27 **§12XX.26 Qualified State Commodity Board.**

28
29 The term *Qualified State Commodity Board* means a means a producer or handler governed
30 entity—

31
32 (a) That is authorized by State law or a State government agency;

33
34 (b) That is organized and operating within a State;

35
36 (c) That is not federally administered;

37
38 (d) That receives mandatory contributions and conducts promotion, research, and/or information;
39 and,

40
41 (e) That meets the criteria, established by the Board and approved by the Secretary, relating to
42 the qualifications of such entity to perform its duties under this part as determined by the Board, and is
43 certified by the Board under §12XX.XX, with the approval of the Secretary.

44
45 **§12XX.27 Research.**

1 *Research* means any type of test, study, or analysis designed to enhance or increase the
2 consumption, image, desirability, use, marketability, or production of organic products; or to do studies
3 on nutrition, market data, processing, environmental and human health benefits, quality of organic
4 products, including research directed to organic product characteristics and product development,
5 including new uses of existing organic products, new organic products or improved technology in the
6 production, processing and packaging of organic products.

7
8 **§12XX.28 Secretary.**

9
10 *Secretary* means the Secretary of Agriculture of the United States, or any other officer or
11 employee of the Department to whom authority has been delegated, or to whom authority may hereafter
12 be delegated, to act in the Secretary's stead.

13
14 **§12XX.29 State.**

15
16 *State* means any of the 50 States of the United States, the District of Columbia, the
17 Commonwealth of Puerto Rico, or any territory or possession of the United States.

18
19 **§12XX.30 Suspend.**

20
21 *Suspend* means to issue a rule under 5 U.S.C. 553 to temporarily prevent the operation of an
22 order or part thereof during a particular period of time specified in the rule.

23
24 **§12XX.31 Terminate.**

25
26 *Terminate* means to issue a rule under 5 U.S.C. 553 to cancel permanently the operation of an
27 order or part thereof beginning on a date certain specified in the rule.

28
29 **§12XX.32 United States.**

30
31 *United States* means collectively the 50 States, the District of Columbia, the Commonwealth of
32 Puerto Rico and the territories and possessions of the United States.

33
34 **§12XX.33 Voluntarily assessed entity.**

35
36 *Voluntarily assessed entity* means any covered entity with gross organic revenue of less than
37 \$250,000 per marketing year that elects to participate in the Order by remitting an assessment pursuant
38 to §12XX.53(a)(1).

39
40 **GENERIC RESEARCH AND PROMOTION ORDER FOR ORGANIC BOARD**

41
42 **§12XX.40 Establishment and membership.**

43
44 (a) *Establishment of the Board.* There is hereby established a Generic Research and
45 Promotion Program for Organic Board to administer the terms and provisions of this Order. Seats on
46 the Board shall be apportioned as set forth in paragraph (b) of this section. There shall be no alternate
47 Board members.

1
2 (b) The Board shall be composed of 17 members and shall be established as follows:
3

4 (1) One member shall be an organic producer from the Pacific Northwest which consists of the
5 states of Alaska, Hawaii, Washington, Oregon, Montana, and Idaho;
6

7 (2) One member shall be an organic producer from Northern California, which shall include the
8 counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado,
9 Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Mono, Napa, Nevada, Placer, Plumas,
10 Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou,
11 Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Yolo, and Yuba;
12

13 (3) One member shall be an organic producer from Southern California, which shall include the
14 counties of Fresno, Imperial, Inyo, Kern, Kings, Los Angeles, Madera, Mariposa, Merced, Monterey,
15 Orange, Riverside, San Benito, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Tulare,
16 Tuolumne, and Ventura;
17

18 (4) One member shall be an organic producer from the Southwest, which consists of the states of
19 Arizona, Colorado, Utah, Nevada, New Mexico, Texas, and Wyoming;
20

21 (5) One member shall be an organic producer from the North Central which consists of the states
22 of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio,
23 South Dakota, and Wisconsin;
24

25 (6) One member shall be an organic producer from the South which consists of the states of
26 Alabama, Arkansas, Florida, Georgia, Kentucky, Oklahoma, Louisiana, Mississippi, North Carolina,
27 South Carolina, Tennessee, Virginia, as well as the territories of Puerto Rico, and the U.S. Virgin
28 Islands, and all other parts of the United States not listed in paragraphs (b)(1), (b)(2), (b)(3), (b)(4),
29 (b)(5), and (b)(7) of this section; and
30

31 (7) One member shall be an organic producer from the Northeast which consists of the states of
32 Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York,
33 Pennsylvania, Rhode Island, Vermont, West Virginia, and the District of Columbia;
34

35 (8) One member shall be a voluntarily assessed entity, who shall have gross organic revenue less
36 than \$250,000;
37

38 (9) Five organic handlers;
39

40 (10) Two organic product processor members;
41

42 (11) One organic importer member; and,
43

44 (12) One at-large public member, who shall be a non-voting member.
45

46 (c) At least once in every five-year period, but not more frequently than once in every three-year
47 period, the Board will review the participation rate of voluntarily assessed entities. The review will be

1 conducted using the Board's annual assessment receipts. If warranted, the Board will recommend to the
2 Secretary that the membership or size of the Board be adjusted to reflect changes in the number of
3 participating voluntarily assessed entities. Any changes in Board composition shall be implemented by
4 the Secretary through rulemaking.

5
6 (d) At least once in every five-year period, but not more frequently than once in every three-year
7 period, the Board will review the geographical distribution of certified organic operations in the United
8 States with respect to the organic producer Board member seats. The review will be conducted using the
9 NOP's list of certified organic operations and, if available, other reliable reports from the industry. If
10 warranted, the Board will recommend to the Secretary that the membership or size of the Board be
11 adjusted to reflect changes in geographical distribution of certified organic operations in the United
12 States. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

13
14 **§12XX.41 Nominations and appointments.**

15
16 (a) Nominees must be organic producers, organic handlers, or organic importers with gross
17 organic revenue of at least \$250,000 who produce, handle or import in excess of \$250,000 of organic
18 products in a marketing year, except for the voluntarily assessed entity and the non-voting at-large public
19 members.

20
21 (b) Initial nominations shall be submitted to the Secretary. Before considering any nominations,
22 the Secretary shall publicize the nomination process, using trade press or other means deemed
23 appropriate, and shall conduct outreach to all known organic producers, organic handlers, organic
24 product processors organic importers, and the voluntarily assessed entities that have opted into the
25 program to generate nominees that reflect the range of operations within the organic industry. The
26 Department may use local, state, or regional entities, mail or other methods to elicit potential nominees.
27 The Department shall ensure that all eligible candidates are aware of the opportunity to serve on the
28 Board. The Secretary shall select the initial members of the Board from the nominations submitted.

29
30 (c) Subsequent nominations shall be conducted as follows:

31
32 (1) The Board shall conduct outreach to all known organic producers, organic handlers, organic
33 product processors and organic importers with gross organic revenue in excess of \$250,000 in a
34 marketing year and all voluntarily assessed entities who have opted into the program. Organic producers
35 and voluntarily assessed entities who have opted into the program may submit nominations to the Board.
36 Organic handlers, organic product processors organic importers, and non-voting at large candidates may
37 submit nominations to the Secretary;

38
39 (2) Organic producers and voluntarily assessed entities who have opted into the program shall
40 provide the Board with a short background statement outlining their qualifications to serve on the Board.
41 Organic handler, organic importer, organic product processor, and non-voting at large nominees shall
42 provide the Secretary with a short background statement outlining their qualifications to serve on the
43 Board;

44
45 (3) Nominees that hold multiple organic certificates (for production, handling, and/or importing)
46 may seek nomination to the Board for any seat for which they are qualified;

1 (4) For the Board seats allocated by region or State, organic producers must be domiciled in the
2 region for which they seek nomination. Nominees must specify for which region they are seeking
3 nomination. The names of nominees shall be placed on a ballot by region. The ballots along with the
4 background statements shall be mailed to all organic producers in that particular region with gross
5 organic revenue in excess of \$250,000 per marketing year, and any organic producer in that region that
6 has remitted a voluntary assessment pursuant to §12XX.52(b) for the previous marketing year. Organic
7 producers may vote in each region in which they produce organic products. The votes shall be tabulated
8 for each region and the nominees receiving the highest number of votes shall be placed at the top of the
9 list in descending order by vote. The top two candidates for each position shall be submitted to the
10 Secretary at least six months before the new Board term begins;

11
12 (5) For the Board seat allocated to voluntarily assessed entities, the names of nominees shall be
13 placed on a ballot. The ballot along with the background statements shall be mailed to all voluntarily
14 assessed entities. The votes shall be tabulated and the nominees receiving the highest number of votes
15 shall be placed at the top of the list in descending order by vote. The top two candidates for this position
16 shall be submitted to the Secretary at least six months before the new Board term begins;

17
18 (6) For the Board seats allocated to organic handlers, organic product processors, the organic
19 importer, and the non-voting at-large nominees may submit applications directly to the Secretary;

20
21 (7) Any person nominated to serve on the Board shall file with the Secretary at the time of the
22 nomination a background questionnaire;

23
24 (8) From the nominations made pursuant to this section, the Secretary shall appoint the members
25 of the Board on the basis of representation provided in §12XX.40;

26
27 (9) No two members of the Board shall be employed by a single corporation, company,
28 partnership or any other legal entity;

29
30 (10) The Board may recommend to the Secretary modifications to its nomination procedures as it
31 deems appropriate. Any such modifications shall be implemented through rulemaking by the Secretary;
32 and,

33
34 (11) The Board shall strive for diversity in its membership. This includes diversity that meets
35 Equal Employment Opportunity requirements, as well as diversity among organic products based on the
36 proportions of assessments paid, diversity among crop type, diversity among geographic regions,
37 diversity among the segments represented in the supply chain, diversity in the size of operations,
38 diversity in marketing expertise, and diversity in research experience.

39
40 **§12XX.42 Term of office.**

41
42 (a) With the exception of the initial Board, each Board member shall serve for a term of three
43 years or until the Secretary selects his or her successor. Each term of office shall begin on January 1 and
44 end on December 31. No member may serve more than two full consecutive three-year terms, except as
45 provided in paragraph (b) of this section.
46

1 (b) For the initial Board, the terms of the Board members shall be staggered for two, three and
2 four years. Determination of which of the initial members shall serve a term of two, three or four years
3 shall be recommended to the Secretary by the Board.
4

5 (c) No single corporation, company, partnership or any other legal entity can be represented by an
6 employee or owner for more than two consecutive terms.
7

8 **§12XX.43 Removal and vacancies.**
9

10 (a) The Board may recommend to the Secretary that a member be removed from office if the
11 member consistently fails or refuses to perform his or her duties properly or engages in dishonest acts or
12 willful misconduct. If the Secretary determines that any person appointed under this subpart consistently
13 fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful
14 misconduct, the Secretary shall remove the person from office. A person appointed under this subpart or
15 any employee of the Board may be removed by the Secretary if the Secretary determines that the
16 person's continued service would be detrimental to the purposes of the Act.
17

18 (b) If a member resigns, is removed from office, or dies, or if any member of the Board ceases to
19 work for or be affiliated with an organic producer, organic handler or organic importer, or if an organic
20 producer representing regional producers in the Pacific Northwest, California, Southwest, North Central,
21 South or Northeast ceases to do business in the region he or she represents, such position shall become
22 vacant.
23

24 (c) If a position becomes vacant, nominations to fill the vacancy will be conducted using the
25 nominations process set forth in this Order or the Board may recommend to the Secretary that he or she
26 appoint a successor from the most recent list of nominations for the position.
27

28 (d) A vacancy will not be required to be filled if the unexpired term is less than six months.
29

30 **§12XX.44 Procedure.**
31

32 (a) A majority of the Board members shall constitute a quorum.
33

34 (b) Each voting member of the Board shall be entitled to one vote on any matter put to the Board
35 and the motion will carry only if supported by a majority of Board members, except for
36 recommendations to change the assessment rate or to adopt a budget, both of which require affirmation
37 by two-thirds of the total number of voting Board members.
38

39 (c) At an assembled meeting, all votes shall be cast in person.
40

41 (d) In lieu of voting at an assembled meeting and, when in the opinion of the chairperson of the
42 Board such action is considered necessary, the Board may take action only if supported by a majority of
43 members (unless two-thirds is required under the Order) by mail, telephone, electronic mail, facsimile,
44 or any other means of communication. In that event, all members must be notified and provided the
45 opportunity to vote. Any action so taken shall have the same force and effect as though such action had
46 been taken at an assembled meeting. All votes shall be recorded in Board minutes.
47

1 (e) There shall be no proxy voting.

2
3 **§12XX.45 Reimbursement and attendance.**

4
5 Board members shall serve without compensation, but shall be reimbursed for reasonable travel
6 expenses, as approved by the Board, which they incur when performing Board business.

7
8 **§12XX.46 Powers and duties.**

9
10 The Board shall have the following powers and duties:

11
12 (a) To meet, organize, and select from among the members of the Board a chairperson, other
13 officers, committees, and subcommittees, as the Board determines appropriate;

14
15 (b) To administer this subpart in accordance with its terms and conditions and to collect
16 assessments;

17
18 (c) To develop and recommend to the Secretary for approval such bylaws as may be necessary
19 for the functioning of the Board, and such rules and regulations as may be necessary to administer the
20 Order, including activities authorized to be carried out under the Order;

21
22 (d) To meet not less than annually, organize, and select from among the members of the Board a
23 chairperson, vice chairperson, secretary/treasurer, other officers, and committees and subcommittees, as
24 the Board determines appropriate.;

25
26 (e) To employ or contract with persons, other than the Board members, as the Board considers
27 necessary to assist the Board in carrying out its duties, and to determine the compensation and specify
28 the duties of the persons;

29
30 (f) To notify all Board meetings through a press release or other means and to give the Secretary
31 the same notice of meetings of the Board (including committee, subcommittee, and the like) as is given
32 to members so that the Secretary's representative(s) may attend such meetings, and to keep and report
33 minutes of each meeting of the Board to the Secretary;

34
35 (g) To develop and submit programs, plans and projects to the Secretary for the Secretary's
36 approval, and enter into contracts or agreements related to such programs, plans and projects, which
37 must be approved by the Secretary before becoming effective, for the development and carrying out of
38 programs, plans or projects of promotion, research, and information. The payment of costs for such
39 activities shall be from funds collected pursuant to this Order. Each contract or agreement shall provide
40 that:

41
42 (1) The contractor or agreeing party shall develop and submit to the Board a program, plan or
43 project together with a budget or budgets that shall show the estimated cost to be incurred for such
44 program, plan or project;

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

4
5 (3) The Secretary may audit the records of the contracting or agreeing party periodically; and
6

7 (4) Any subcontractor who enters into a contract with a Board contractor and who receives or
8 otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.
9

10 (h) To prepare and submit for the approval of the Secretary fiscal year budgets in accordance
11 with §12XX.XX;

12
13 (i) To borrow funds necessary for startup expenses of the Order during the first year of operation
14 by the Board;

15
16 (j) To invest assessments collected and other funds received pursuant to the Order and use
17 earnings from invested assessments to pay for activities carried out pursuant to the Order;

18
19 (k) To recommend changes to the assessment rates as provided in this part;

20
21 (l) To cause its books to be audited by an independent auditor at the end of each fiscal year and at
22 such other times as the Secretary may request, and to submit a report of the audit directly to the
23 Secretary;

24
25 (m) To periodically prepare and make public reports of program activities and, at least once each
26 fiscal year, to make public an accounting of funds received and expended;

27
28 (n) To maintain such minutes, books and records and prepare and submit such reports and
29 records from time to time to the Secretary as the Secretary may prescribe; to make appropriate
30 accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records
31 that accurately reflect the actions and transactions of the Board;

32
33 (o) To act as an intermediary between the Secretary and any organic industry participant;

34
35 (p) To receive, investigate, and report to the Secretary complaints of violations of the Order;

36
37 (q) To recommend to the Secretary such amendments to the Order as the Board considers
38 appropriate; and

39
40 (r) To work to achieve an effective, continuous, and coordinated program of promotion, research,
41 and information and to carry out programs, plans, and projects designed to provide maximum benefits to
42 the organic industry.

43
44 (s) When researching priorities for each marketing year the Board will provide public notice
45 using local, state, or regional entities, mail and/or other methods to solicit public input from all covered
46 entities and will have at least one meeting or conference call to determine the priorities for each
47 marketing year.

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§12XX.47 Prohibited activities.

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

- (a) Any action that would be a conflict of interest;
- (b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments or subdivision thereof (including the National Organic Standards Board), other than recommending to the Secretary amendments to the Order; and
- (c) Any promotion that is false, misleading or disparaging to another agricultural commodity.

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: 25 percent for research, 25 percent for information, 25 percent for promotion, and 25 percent for discretionary funds; and
 - (ii) Of the funds allocated to research, the producer assessments within that account shall go into an account for regional research, with proposals to be evaluated by a subcommittee of the Board made up of the regional organic producer members from the Pacific Northwest, California, Southwest, North Central, South or Northeast who will make a recommendation that shall be voted on by the Board; and
 - (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.

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

3
4 (b) Subject to this section, any amendment or addition to an approved budget must be approved
5 by the Department, including shifting funds from one program, plan or project to another. Shifts of funds
6 that do not result in an increase in the Board's approved budget and are consistent with governing bylaws
7 need not have prior approval by the Department.

8
9 (c) The Board is authorized to incur such expenses, including provision for a reserve, as the
10 Secretary finds reasonable and likely to be incurred by the Board for its maintenance and functioning,
11 and to enable it to exercise its powers and perform its duties in accordance with the provisions of this
12 subpart. Such expenses shall be paid from funds received by the Board.

13
14 (d) With approval of the Department, the Board may borrow money for the payment of startup
15 expenses subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds
16 borrowed shall be expended only for startup costs and capital outlays and are limited to the first year of
17 operation by the Board.

18
19 (e) The Board may accept voluntary contributions. Such contributions shall be free from any
20 encumbrance by the donor and the Board shall retain complete control of their use. The Board may
21 receive funds from outside sources with approval of the Secretary for specific authorized projects.

22
23 (f) The Board may also receive other funds provided through the Department or from other
24 sources, with the approval of the Secretary, for authorized activities.

25
26 (g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the
27 implementation, administration, enforcement and supervision of the Order, including all referendum
28 costs in connection with the Order.

29
30 (h) For fiscal years beginning three years after the date of the establishment of the Board, the
31 Board may not expend for administration, maintenance, and the functioning of the Board an amount that
32 is greater than 15 percent of the assessment and other income received by and available to the Board for
33 the fiscal year. For purposes of this limitation, reimbursements to the Secretary shall not be considered
34 administrative costs.

35
36 (i) Any program, plan or project receiving funds under this section shall not expend for
37 administration an amount that is greater than 15 percent of the total funds allocated to the program, plan
38 or project.

39
40 (j) The Board may establish an operating monetary reserve and may carry over to subsequent
41 fiscal years excess funds in any reserve so established: *Provided*, that, the funds in the reserve do not
42 exceed one fiscal year's budget of expenses. Subject to approval by the Secretary, such reserve funds
43 may be used to defray any expenses authorized under this subpart.

44
45 (k) Pending disbursement of assessments and all other revenue under a budget approved by the
46 Secretary, the Board may invest assessments and all other revenues collected under this part in:

1 (1) Obligations of the United States or any agency of the United States;

2
3 (2) General obligations of any State or any political subdivision of a State;

4
5 (3) Interest bearing accounts or certificates of deposit of financial institutions that are members
6 of the Federal Reserve System;

7
8 (4) Obligations fully guaranteed as to principal interest by the United States; or

9
10 (5) Other investments as authorized by the Secretary.

11
12 **§12XX.51 Financial statements.**

13
14 (a) The Board shall prepare and submit financial statements to the Department on a quarterly
15 basis, or at any other time as requested by the Secretary. Each such financial statement shall include, but
16 not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show
17 expenditures during the time period covered by the report, year-to-date expenditures, and the
18 unexpended budget.

19
20 (b) Each financial statement shall be submitted to the Department within 30 calendar days after
21 the end of the time period to which it applies.

22
23 (c) The Board shall submit to the Department an annual financial statement within 90 calendar
24 days after the end of the fiscal year to which it applies.

25
26 **§12XX.52 Assessments.**

27
28 (a) The Board's programs and expenses shall be paid by assessments on assessed entities, other
29 income of the Board, and other funds available to the Board.

30
31 (b) Subject to the offset specified in §12XX.54 each organic producer, organic handler and
32 organic importer with gross organic revenue of greater than \$250,000 shall pay the following
33 assessments to the Board:

34
35 (1) Organic producers shall have the option of paying one-tenth of one percent of either (A) net
36 organic sales or (B) Producer Net Profit.

37
38 (2) Organic handlers shall pay an assessment of one-tenth of one percent of net organic sales of
39 products that are certified to the "100% organic" or "organic" standard pursuant to 7 CFR § 205.301(a)
40 and (b). Organic handlers shall pay an assessment of 70% of one-tenth of one percent of net organic sales
41 of products that are certified to the "made with organic" standard pursuant to 7 CFR § 205.301(c).

42
43 (3) Organic importers shall pay an assessment to the Board through Customs on organic products
44 imported for marketing in the United States. Organic importers shall pay an assessment of one-tenth of
45 one percent of net organic sales of products that are certified to the "100% organic" or "organic" standard
46 pursuant to 7 CFR § 205.301(a) and (b). Organic importers shall pay an assessment of 70% of one-tenth
47 of one percent of net 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 one-tenth of one percent of net organic sales on the organic product imported into the United States identified in the Harmonized Tariff Schedule of the United States (HTS) numbers listed in the table below, which is current as of the date of the publication of the regulation. The HTS is updated biannually and any updates published by the U.S. International Trade Commission will be considered effective immediately upon publication without formal amendment of this section. Organic importers shall pay an assessment of 70% of one-tenth of one percent of net 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.

ORGANIC COMMODITIES BY HTS		
HTS No.	Description	Effective Year
0409.00.0005	NATURAL HONEY, CERTIFIED ORGANIC	2012
0701.90.0070	POTATOES, CERTIFIED ORGANIC, FRESH OR CHILLED, EXCEPT SEED, NOT IN IMMEDIATE CONTAINERS OF NOT OVER 1200 KG NET WEIGHT – KG	2011
0702.00.0015	CHERRY TOMATOES, CERTIFIED ORGANIC, FRESH OR CHILLED - KG	2011
0702.00.0025	ROMA (PLUM TYPE) TOMATOES, CERTIFIED ORGANIC, FRESH OR CHILLED – KG	2011
0702.00.0035	TOMATOES, CERTIFIED ORGANIC, FRESH OR CHILLED, EXCLUDING CHERRY OR ROMA (PLUM TYPE) - KG	2011
0703.10.0010	ONION SETS, CERTIFIED ORGANIC, FRESH OR CHILLED - KG	2011
0703.20.0005	CERTIFIED ORGANIC GARLIC, FRESH WHOLE BULBS	2013
0704.10.0010	CAULIFLOWER AND HEADED BROCCOLI (BRASSICA OLERACEA VAR. BOTRYTIS), CERTIFIED ORGANIC, FRESH OR CHILLED - KG	2011
0704.90.4025	BROCCOLI, INCLUDING SPROUTING BROCCOLI (BRASSICA OLERACEA VAR. ITALICA), CERTIFIED ORGANIC, FRESH OR CHILLED, EXCLUDING HEADED BROCCOLI - KG	2011

0705.11.0010	HEAD LETTUCE (CABBAGE LETTUCE), CERTIFIED ORGANIC, FRESH OR CHILLED – KG	2011
0705.19.0010	LETTUCE (LACTUCA SATIVA), CERTIFIED ORGANIC, FRESH OR CHILLED, EXCLUDING HEAD LETTUCE - KG	2011
0706.10.3010	CARROTS, CERTIFIED ORGANIC, FRESH OR CHILLED - KG	2011
0707.00.0010	CUCMBERS AND GHERKINS, CERTIFIED ORGANIC, FRESH OR CHILLED	2012
0709.40.0010	CELERY, CERTIFIED ORGANIC, FRESH OR CHILLED, EXCLUDING CELERIAC – KG	2011
0709.60.0010	FRUITS OF THE GENUS CAPSICUM (PEPPERS) OR OF THE GENUS PIMENTA (E.G., ALLSPICE), CERTIFIED ORGANIC, FRESH OR CHILLED – KG	2011
0709.60.4015	PEPPERS, SWEET BELL-TYPE (CAPSICUM ANNUM), GREENHOUSE, CERTIFIED ORGANIC, FRESH OR CHILLED - KG	2011
0709.60.4065	PEPPERS, SWEET BELL-TYPE (CAPSICUM ANNUM), CERTIFIED ORGANIC, FRESH OR CHILLED, OTHER THAN GREENHOUSE - KG	2011
0709.70.0010	SPINACH, NEW ZEALAND SPINACH AND ORACHE SPINACH (GARDEN SPINACH), CERTIFIED ORGANIC, FRESH OR CHILLED - KG	2011
0802.12.0005	CERTIFIED ORGANIC ALMONDS, FRESH OR DRIED, SHELLED	2013
0803.90.0025	CERTIFIED ORGANIC BANANAS, FRESH OR DRIED	2013
0804.40.0020	HASS AVOCADOS AND AVOCADOS DETERMINED BY THE SECRETARY OF AGRICULTURE TO BE HASS-LIKE, CERTIFIED ORGANIC, FRESH OR DRIED-KG	2011
0804.50.4045	CERTIFIED ORGANIC MANGOES, FRESH, IF ENTERED DURING THE PERIOD FROM SEPTEMBER 1, IN ANY YEAR, TO THE FOLLOWING MAY 31, INCLUSIVE	2013
0804.50.6045	CERTIFIED ORGANIC MANGOES FRESH, IF ENTERED DURING THE PERIOD FROM JUNE 1 TO AUGUST 31, OF THE FOLLOWING YEAR, INCLUSIVE	2013
0805.10.0045	ORANGES, CERTIFIED ORGANIC, FRESH OR DRIED, EXCLUDING TEMPLE ORANGES – KG	2011
0805.40.0010	CABBAGE, CERTIFIED ORGANIC, FRESH OR CHILLED	2012
0805.40.0010	GRAPEFRUIT INCLUDING POMELOS, CERTIFIED ORGANIC, FRESH OR DRIED	2012
0805.50.2010	LEMONS (CITRUS LIMON, CITRUS LIMONUM), CERTIFIED ORGANIC, FRESH OR DRIED - KG	2011
0806.10.0010	GRAPES, CERTIFIED ORGANIC, FRESH - KG	2011
0808.10.0010	APPLES, CERTIFIED ORGANIC, FRESH - KG	2011
0808.10.0045	APPLES, CERTIFIED ORGANIC, VALUED OVER 22 CENTS PER KILOGRAM, FRESH – KG	2011
0808.20.0010	PEARS AND QUINCES, CERTIFIED ORGANIC, FRESH - KG	2011
0808.20.2015	PEARS AND QUINCES, CERTIFIED ORGANIC, ENTERED DURING THE PERIOD FROM APRIL 1 TO JUNE 30, INCLUSIVE, IN ANY YEAR, FRESH - KG	2011
0808.20.4015	PEARS AND QUINCES, CERTIFIED ORGANIC, ENTERED DURING THE PERIOD FROM JULY 1 OF ANY YEAR TO MARCH 31 OF THE FOLLOWING YEAR, FRESH – KG	2011
0808.30.0010	PEARS, CERTIFIED ORGANIC, FRESH (<i>Replacing 0808200010 PEARS AND QUINCES, CERTIFIED ORGANIC, FRESH – KG</i>)	2012
0808.40.2015	QUINCES, CERTIFIED ORGANIC, ENTERED DURING THE PERIOD FROM APRIL 1 TO JUNE 30, INCLUSIVE, IN ANY YEAR, FRESH	2012

0808.40.4015	QUINCES, CERTIFIED ORGANIC, ENTERED DURING THE PERIOD FROM JULY 1 OF ANY YEAR TO MARCH 31 OF THE FOLLOWING YEAR, FRESH	2012
0809.20.0010	CHERRIES, CERTIFIED ORGANIC, FRESH - KG	2011
0810.10.0010	STRAWBERRIES, CERTIFIED ORGANIC, FRESH - KG	2011
0810.40.0026	BLUEBERRIES, CULTIVATED, CERTIFIED ORGANIC, FRESH - KG	2011
0901.11.0015	COFFEE, CERTIFIED ORGANIC, ARABICA, NOT DECAFFEINATED, NOT ROASTED – KG	2011
0901.11.0045	COFFEE, CERTIFIED ORGANIC, NOT ARABICA, NOT DECAFFEINATED, NOT ROASTED – KG	2011
0901.12.0015	COFFEE, CERTIFIED ORGANIC, DECAFFEINATED, NOT ROASTED - KG	2011
0901.21.0010	COFFEE, ROASTED, NOT DECAFFEINATED, CERTIFIED ORGANIC - KG	2011
0901.21.0035	COFFEE, CERTIFIED ORGANIC, IN RETAIL CONTAINERS WEIGHING 2 KG OR LESS, ROASTED, NOT DECAFFEINATED - KG	2011
0901.21.0055	COFFEE, CERTIFIED ORGANIC, ROASTED, NOT IN RETAIL CONTAINERS WEIGHING 2 KG OR LESS, NOT DECAFFEINATED - KG	2011
0901.22.0035	COFFEE, CERTIFIED ORGANIC, IN RETAIL CONTAINERS WEIGHING 2 KG OR LESS, DECAFFEINATED, ROASTED - KG	2011
0902.10.1015	GREEN TEA (NOT FERMENTED), CERTIFIED ORGANIC, FLAVORED, IN IMMEDIATE PACKINGS OF A CONTENT NOT EXCEEDING 3 KG - KG	2011
0902.10.9015	GREEN TEA (NOT FERMENTED), CERTIFIED ORGANIC, IN IMMEDIATE PACKINGS OF A CONTENT NOT EXCEEDING 3KG, NOT FLAVORED - KG	2011
0902.20.9015	GREEN TEA (NOT FERMENTED), CERTIFIED ORGANIC, NOT FLAVORED, NOT IN IMMEDIATE PACKINGS OF A CONTENT NOT EXCEEDING 3 KG – KG	2011
0902.30.0015	BLACK TEA (FERMENTED) AND PARTLY FERMENTED TEA, CERTIFIED ORGANIC, IN TEA BAGS, IN IMMEDIATE PACKINGS OF A CONTENT NOT EXCEEDING 3 KG - KG	2011
0910.11.0010	CERTIFIED ORGANIC GINGER, NOT GROUND	2013
1001.10.0025	DURUM WHEAT, CERTIFIED ORGANIC, EXCEPT SEED - KG	2011
1005.90.2015	CERTIFIED ORGANIC YELLOW DENT CORN (MAIZE), EXCEPT SEED 1509102030 CERTIFIED ORGANIC OLIVE OIL AND ITS FRACTIONS, LABELED AS EXTRA VIRGIN, NOT CHEMICALLY MODIFIED, WEIGHING WITH THE IMMEDIATE CONTAINER UNDER 18KG	2013
1006.30.9015	RICE, CERTIFIED ORGANIC, SEMI-MILLED OR WHOLLY MILLED, WHETHER OR NOT POLISHED OR GLAZED, OTHER THAN PARBOILED – KG	2011
1201.00.0045	SOYBEANS, CERTIFIED ORGANIC, WHETHER OR NOT BROKEN, EXCEPT SEEDS OF A KIND USED FOR SOWING OR USED AS OIL STOCK - KG	2011
1204.00.0025	CERTIFIED ORGANIC FLAXSEED (LINSEED) FOR USE AS OIL STOCK, WHETHER OR NOT BROKEN	2013
1509.10.2015	CERTIFIED ORGANIC OLIVE OIL AND ITS FRACTIONS, VIRGIN, NOT CHEMICALLY MODIFIED, WEIGHING WITH THE IMMEDIATE CONTAINER UNDER 18KG	2013
1509.10.2040	CERTIFIED ORGANIC OLIVE OIL AND ITS FRACTIONS, VIRGIN, NOT CHEMICALLY MODIFIED, WEIGHING WITH THE IMMEDIATE CONTAINER UNDER 18KG	2013
1509.10.4015	CERTIFIED ORGANIC OLIVE OIL AND ITS FRACTIONS, VIRGIN, NOT CHEMICALLY MODIFIED, WEIGHING WITH THE IMMEDIATE CONTAINER 18 KG OR OVER	2013

1509.10.4030	CERTIFIED ORGANIC OLIVE OIL AND ITS FRACTIONS, LABELED AS EXTRA VIRGIN, NOT CHEMICALLY MODIFIED, WEIGHING WITH THE IMMEDIATE CONTAINER 18 KG OR OVER	2013
1509.10.4040	CERTIFIED ORGANIC OLIVE OIL AND ITS FRACTIONS, VIRGIN, NOT CHEMICALLY MODIFIED, WEIGHING WITH THE IMMEDIATE CONTAINER 18 KG OR OVER	2013
2103.20.4010	TOMATO SAUCES, CERTIFIED ORGANIC, EXCLUDING TOMATO KETCHUP – KG	2011
2204.10.0065	CERTIFIED ORGANIC SPARKLING WINE OF FRESH GRAPES VALUED OVER \$1.59/LITER	2013
2204.21.5035	CERT ORGANIC RED WINE OF FRESH GRAPES OF ALCOHOLIC STRENGTH BY VOLUME NOT OVER 14% VOL, IN CONTNERS HOLDN 2 LITRS OR LESS, VALUE OVR \$1.05/LITR, NESOI	2013
2204.21.5050	CERT ORGANIC WHITE WINE, EXCEPT ICEWINE, OF ALCOHOLC STRENGTH BY VOL NT OVR 14% VOL, IN CONTNERS HOLDNG 2 LITERS OR LESS, VALUED OVER \$1.05/LITR,NESOI	2013

1
2 (c) Each organic producer and organic handler shall remit to the Board the amount due no later
3 than 60 days following the end of the year in which the organic product was produced or handled.
4 Quarterly payments may be accepted.

5
6 (d) Any organic producer, organic handler or organic importer with gross organic revenue less
7 than \$250,000 shall have the option of participating in the Order as a voluntarily assessed entity pursuant
8 to §12XX.53(a).

9
10 (e) At least 24 months after the Order becomes effective and periodically thereafter, the Board
11 shall review and may recommend to the Secretary, upon an affirmative vote of at least two-thirds of the
12 voting members of the Board, a change in the assessment rate. A change in the assessment rate is
13 subject to rulemaking by the Secretary.

14
15 (f) When an organic producer, organic handler or organic importer fails to pay the assessment
16 within 60 calendar days of the date it is due, the Board may impose a late payment charge and interest.
17 The late payment charge and rate of interest shall be prescribed in regulations issued by the Secretary.
18 All late assessments shall be subject to the specified late payment charge and interest. Persons failing to
19 remit total assessments due in a timely manner may also be subject to actions under federal debt
20 collection procedures.

21
22 (g) The Board may accept advance payment of assessments from any organic producer, organic
23 handler, or organic importer that will be credited toward any amount for which that person may become
24 liable. The Board may not pay interest on any advance payment.

25
26 (h) If the Board is not in place by the date the first assessments are to be collected, the Secretary
27 shall receive assessments and shall pay such assessments and any interest earned to the Board when it is
28 formed.

29
30 **§12XX.53 Voluntarily assessed entities.**

31 (a) *Voluntary assessment.*

1
2 (1) Organic producers with gross organic revenue less than \$250,000 in the last marketing year
3 may elect to participate in the Order as a voluntarily assessed entity by remitting an assessment of one-
4 tenth of one percent of either (A) net organic sales or (B) Producer Net Profit, prior to the start of the
5 marketing year.
6

7 (2) Organic handlers with gross organic revenue less than \$250,000 in the last marketing year
8 may elect to participate in the Order as a voluntarily assessed entity by remitting an assessment of one-
9 tenth of one percent of net organic sales prior to the start of the marketing year.
10

11 (3) (a) Organic importers with gross organic revenue less than \$250,000 in the prior marketing
12 year may elect to participate in the Order as a voluntarily assessed entity by remitting an assessment of
13 one-tenth of one percent of net organic sales prior to the start of the marketing year.
14

15 (b) Organic importers with gross organic revenue of greater than \$250,000 of organic products
16 during the prior marketing year, and that had less than \$250,000 of gross organic revenue during the
17 marketing year shall automatically receive a refund from the Board for the applicable assessments. The
18 Board shall refund such organic importers their assessments as collected by Customs no later than 60
19 calendar days after receipt of such assessments by the Board. The Board will stop the refunding of
20 assessments to such organic importers who during the marketing year had gross organic revenue of more
21 than \$250,000 organic products. These organic importers will be notified accordingly. No interest shall
22 be paid on the assessments collected by Customs or the Board. Any organic importer who receives a
23 refund pursuant to this subsection may elect to participate in the Order as a voluntarily assessed entity
24 by remitting an assessment of one-tenth of one percent of net organic sales.
25

26 (4) If an entity is a combination of an organic producer, organic handler and/or an organic
27 importer, such entity's combined gross organic revenue during a marketing year shall count towards the
28 \$250,000 gross organic revenue threshold.
29

30 (5) Organic producers, organic handlers and organic importers that had gross organic revenue of
31 greater than \$250,000 during the marketing year shall pay the Board the applicable assessments owed
32 within 30 calendar days after the end of the marketing year and submit any necessary reports to the
33 Board pursuant to §12XX.XX.
34

35 (b) Dual-covered commodity exemption. Organic producers and organic handlers of dual-
36 covered commodities may apply to the Board, on a form provided by the Board, for a certificate of
37 exemption prior to the start of the marketing year. This is an annual exemption and organic producers
38 and organic handlers must reapply each year. Such organic producers and organic handlers shall certify
39 that they have remitted an assessment for the dual-covered commodity pursuant to a commodity
40 promotion law. Upon receipt of an application for exemption, the Board shall determine whether an
41 exemption may be granted. The Board may request documentation providing proof of the remittance of
42 the assessment for the dual-covered commodity. The Board will issue, if deemed appropriate, a
43 certificate of exemption to the eligible organic producer or organic handler. It is the responsibility of the
44 organic producer or organic handler to retain a copy of the certificate of exemption.
45

46 **§12XX.54 Assessment offset.**
47

1 The Board may, with the approval of the Secretary, authorize a credit to an organic producer and
2 organic handlers of up to 25 percent of the amount to be remitted to the Board pursuant to §12XX.52 of
3 this subpart to offset collection and compliance costs relating to such assessments and for fees paid to
4 Qualified State Commodity Boards required by State law.

5
6 **PROMOTION, RESEARCH AND INFORMATION**

7
8 **§12XX.60 Programs, plans and projects.**

9
10 (a) The Board shall develop and submit to the Secretary for approval programs, plans and
11 projects authorized by this subpart. Such programs, plans and projects shall provide for promotion,
12 research, information and other activities including consumer and industry information and advertising.

13
14 (b) No program, plan or project shall be implemented prior to its approval by the Secretary. Once
15 a program, plan or project is so approved, the Board shall take appropriate steps to implement it.

16
17 (c) The Board must evaluate each program, plan and project authorized under this subpart to
18 ensure that it contributes to an effective and coordinated program of research, promotion, and
19 information. The Board must submit the evaluations to the Secretary. If the Board finds that a program,
20 plan or project does not contribute to an effective program of promotion, research, or information, then
21 the Board shall terminate such program, plan or project.

22
23 **§12XX.61 Independent evaluation.**

24
25 At least once every five years, the Board shall authorize and fund from funds otherwise available
26 to the Board, an independent evaluation of the effectiveness of the Order and the programs conducted by
27 the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public,
28 the results of each periodic independent evaluation conducted under this section.

29
30 **§12XX.62 Patents, copyrights, trademarks, inventions, product formulations, and publications.**

31
32 Any patents, copyrights, trademarks, inventions, product formulations, and publications
33 developed through the use of funds received by the Board under this subpart shall become part of the
34 public domain.

35
36 **REPORTS, BOOKS, AND RECORDS**

37
38 **§12XX.70 Reports.**

39
40 (a) Organic producers, organic handlers and organic importers will be required to provide
41 periodically to the Board such information as the Board, with the approval of the Secretary, may require.
42 Such information may include, but not be limited to:

43
44 (1) For organic producers and organic handlers:

45
46 (i) The name, address and telephone number of the organic producer and/or organic handler and
47

1 (ii) The value of net organic sales of the organic products.

2
3 (2) For organic importers:

4
5 (i) The name, address and telephone number of the organic importer;

6
7 (ii) The value of the net organic sales of the organic products imported by type; and

8
9 (iii) The country/countries of export.

10
11 (b) For organic producers and organic handlers, such information shall be reported to the Board
12 no later than 60 days following the end of the year or the end of the quarter in which the organic
13 product was produced or handled and shall accompany the collected payment of assessments as
14 specified in §12XX.XX. First quarter data (January-March) shall be reported to the Board no later than
15 the 30th calendar day of May; second quarter data (April-June) shall be reported no later than the 30th
16 calendar day of August; third quarter data (July-September) shall be reported no later than the 30th
17 calendar day of November; and fourth quarter data (October-December) shall be reported no later than
18 the 30th calendar day of February of the following marketing year.

19
20 (c) For organic importers who pay their assessments directly to the Board, such information shall
21 accompany the payment of collected assessments within 60 calendar days after the end of the year or the
22 end of the quarter in which the organic product was imported specified in §12XX.XX.

23
24 **§12XX.71 Books and records.**

25
26 Each organic producer, organic handler and organic importer shall maintain any books and
27 records necessary to carry out the provisions of this subpart and regulations issued thereunder, including
28 such records as are necessary to verify any required reports. Such books and records must be made
29 available during normal business hours for inspection by the Board's or Secretary's employees or agents.
30 Organic producers, organic handlers and organic importers must maintain the books and records for two
31 years beyond the fiscal year to which they apply.

32
33 **§12XX.72 Confidential treatment.**

34
35 All information obtained from books, records, or reports under the Act, this subpart and the
36 regulations issued thereunder shall be kept confidential by all persons, including all employees and
37 former employees of the Board, all officers and employees and former officers and employees of
38 contracting and subcontracting agencies or agreeing parties having access to such information. Such
39 information shall not be available to Board members or organic producers, organic handlers and organic
40 importers. Only those persons having a specific need for such information solely to effectively
41 administer the provisions of this subpart shall have access to such information. Only such information so
42 obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial
43 proceeding or administrative hearing brought at the direction, or at the request, of the Secretary, or to
44 which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in
45 this section shall be deemed to prohibit:

1 (a) The issuance of general statements based upon the reports of the number of persons subject to
2 this subpart or statistical data collected therefrom, which statements do not identify the information
3 furnished by any person; and
4

5 (b) The publication, by direction of the Secretary, of the name of any person who has been
6 adjudged to have violated this part, together with a statement of the particular provisions of this part
7 violated by such person.
8

9 **MISCELLANEOUS**

10
11 **§12XX.80 Right of the Secretary.**

12
13 All fiscal matters, programs, plans or projects, contracts, rules or regulations, reports, or other
14 substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.
15

16 **§12XX.81 Referenda.**

17
18 (a) *Initial referendum.* The Order shall not become effective unless the Order is approved by a
19 majority of eligible voters voting in the referendum. A single eligible voter may cast one vote in the
20 referendum. Bloc voting shall be prohibited.
21

22 (b) *Subsequent referenda.* Every seven years, the Department shall hold a referendum to
23 determine whether assessed entities favor the continuation, suspension, or termination of the Order. The
24 Order shall continue if it is favored by a majority of the assessed entities voting. The Department will
25 also conduct a referendum if 20 percent or more of all assessed entities request the Department to hold a
26 referendum. Bloc voting shall be prohibited.
27

28 **§12XX.82 Suspension or termination.**

29
30 (a) The Secretary shall suspend or terminate this part or subpart or a provision thereof, if the
31 Secretary finds that this part or subpart or a provision thereof obstructs or does not tend to effectuate the
32 purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored
33 by persons voting in a referendum conducted pursuant to the Act.
34

35 (b) The Secretary shall suspend or terminate this subpart at the end of the fiscal year whenever
36 the Secretary determines that its suspension or termination is favored by a majority of assessed entities
37 voting in the referendum.
38

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

41
42 (1) Not later than one hundred and eighty (180) calendar days after making the determination,
43 suspend or terminate, as the case may be, the collection of assessments under this subpart.
44

45 (2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in
46 an orderly manner.
47

1 **§12XX.83 Proceedings after termination.**

2
3 (a) Upon termination of this subpart, the Board shall recommend to the Secretary up to five of its
4 members to serve as trustees for the purpose of liquidating the Board's affairs. Such persons, upon
5 designation by the Secretary, shall become trustees of all of the funds and property then in the
6 possession or under control of the Board, including claims for any funds unpaid or property not
7 delivered, or any other existing claim at the time of such termination.

8
9 (b) The said trustees shall:

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

11
12 (2) Carry out the obligations of the Board under any contracts or agreements entered into
13 pursuant to the Order;

14
15 (3) From time to time account for all receipts and disbursements and deliver all property on hand,
16 together with all books and records of the Board and trustees, to such person or persons as the Secretary
17 directs; and

18
19 (4) Upon request of the Secretary execute such assignments or other instruments necessary or
20 appropriate to vest in such persons title and right to all of the funds, property, and claims vested in the
21 Board or the trustees pursuant to the Order.

22
23 (c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to
24 the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

25
26 (d) Any residual funds not required to defray the necessary expenses of liquidation shall be
27 turned over to the Secretary to be disposed of, to the extent practical, to one or more organic
28 organizations in the United States whose mission is generic organic promotion, research, and
29 information programs.

30
31
32 **§12XX.84 Effect of termination or amendment.**

33
34 Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any
35 regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

36
37 (a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may
38 thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

39
40 (b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

41
42 (c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any
43 other person, with respect to any such violation.

44
45 **§12XX.85 Personal liability.**

1 No member or employee of the Board shall be held personally responsible, either individually or
2 jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts,
3 either of commission or omission, as such member or employee, except for acts of dishonesty or willful
4 misconduct.

5
6 **§12XX.86 Separability.**

7
8 If any provision of this subpart is declared invalid or the applicability of it to any person or
9 circumstances is held invalid, the validity of the remainder of this subpart, or the applicability thereof to
10 other persons or circumstances shall not be affected thereby.

11
12 **§12XX.87 Amendments.**

13
14 Amendments to this subpart may be proposed from time to time by the Board and will be subject
15 to a referendum.

16
17 **§12XX.88 OMB control numbers.**

18
19 The control numbers assigned to the information collection requirements by the Office of
20 Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, are
21 OMB control number XXXX-XX (Board nominee background statement) and OMB control number
22 XXXX.XXXX.

23
24 **Subpart B—Referendum Procedures**

25
26 **§12XX.100 General.**

27
28 Referenda to determine whether eligible organic producers, organic handlers and organic
29 importers favor the issuance, continuance, amendment, suspension, or termination of the Generic
30 Research and Promotion Order for Organic shall be conducted in accordance with this subpart.

31
32 **§12XX.101 Definitions.**

33
34 For the purposes of this subpart:

35
36 (a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to
37 delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been
38 delegated or may hereafter be delegated to act in the Administrator's stead.

39
40 (b) *Organic product* means any product produced under the authority of the Organic Foods
41 Production Act of 1990 (7 U.S.C. 6501-6522), and any amendments thereto.

42
43 (c) *Customs or CBP* means the U.S. Customs and Border Protection, an agency of the U.S.
44 Department of Homeland Security.

1 (d) *Department* means the U.S. Department of Agriculture or any officer or employee of the
2 Department to whom authority has heretofore been delegated, or to whom authority may hereafter be
3 delegated, to act in the Secretary's stead.
4

5 (e) *Eligible voter* means any person who is currently (i) an organic producer or organic handler
6 that either has gross organic revenue in excess of \$250,000 in organic products during the representative
7 period, (ii) an eligible importer, or (iii) an organic producer, organic handler or eligible importer that has
8 voluntarily opted to remit an assessment pursuant to §12XX.53. Any person that holds multiple organic
9 certificates (i.e. for both production and handling) will be treated as a separate eligible voter for each
10 organic certificate.
11

12 (f) *Eligible importer* means any person who is currently an organic importer with gross organic
13 revenue in excess of \$250,000 of organic products during the representative period as a principal or as
14 an agent, broker, or consignee of any person who produced or handled organic products outside of the
15 United States for sale in the United States, and who is listed as the importer of record for such organic
16 products. Importation occurs when organic products outside of the United States is released from
17 custody by Customs and introduced into the stream of commerce in the United States. Included are
18 persons who hold title to foreign-manufactured organic products immediately upon release by Customs,
19 as well as any persons who act on behalf of others, as agents or brokers, to secure the release of organic
20 products from Customs when such organic products is entered or withdrawn for use in the United States.
21

22 (g) *Order* means the Generic Research and Promotion Order for Organic.
23

24 (h) *Person* means any individual, group of individuals, partnership, corporation, association,
25 cooperative, or any other legal entity. For the purpose of this definition, the term “partnership” includes,
26 but is not limited to:
27

28 (1) A husband and a wife who have title to, or leasehold interest in organic production, organic
29 handling or organic import entity as tenants in common, joint tenants, tenants by the entirety, or, under
30 community property laws, as community property; and
31

32 (2) So called “joint ventures” wherein one or more parties to an agreement, informal or
33 otherwise, contributed land, facilities, capital, labor, management, equipment, or other services, or any
34 variation of such contributions by two or more parties, so that it results in the production, handling or
35 importation of organic products and the authority to transfer title to the organic products.
36

37 (i) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to
38 conduct the referendum.
39

40 (j) *Representative period* means the period designated by the Department.
41

42 (k) *United States* means collectively the 50 states of the United States, the District of Columbia,
43 the Commonwealth of Puerto Rico, and the territories and possessions of the United States.
44

45 **§12XX.102 Voting.**
46

1 (a) Each eligible voter shall be entitled to request a ballot and may cast only one ballot in the
2 referendum.

3
4 (b) Proxy voting is not authorized, but an officer or employee of an eligible voter, or an
5 administrator, executor, or trustee of an eligible voter may cast a ballot on behalf of such entity. Any
6 individual so voting in a referendum shall certify that such individual is an officer or employee of the
7 eligible voter, or an administrator, executive, or trustee of an eligible entity and that such individual has
8 the authority to take such action. Upon request of the referendum agent, the individual shall submit
9 adequate evidence of such authority.

10
11 (c) A single eligible voter may cast one vote in the referendum.

12
13 (d) All ballots are to be cast by mail, in person at a local Farm Services Agency office, or by
14 other means, as instructed by the Department.

15
16 **§12XX.103 Instructions.**

17
18 The referendum agent shall conduct the referendum, in the manner provided in this subpart,
19 under the supervision of the Administrator. The Administrator may prescribe additional instructions,
20 consistent with the provisions of this subpart, to govern the procedure to be followed by the referendum
21 agent. Such agent shall:

22
23 (a) Determine the period during which ballots may be cast;

24
25 (b) Provide ballots and related material to be used in the referendum. The ballot shall provide for
26 recording essential information, including that needed for ascertaining whether the person voting, or on
27 whose behalf the vote is cast, is an eligible voter;

28
29 (c) Give reasonable public notice of the referendum:

30
31 (1) By using available media or public information sources, without incurring advertising
32 expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent
33 information. Such sources of publicity may include, but are not limited to, print and radio; and

34
35 (2) By such other means as the agent may deem advisable.

36
37 (d) The Secretary must provide public notice of instructions on voting and a summary of the terms
38 and conditions of the proposed Order. All eligible voters may request and receive by mail a ballot. No
39 person who claims to be eligible to vote shall be refused a ballot;

40
41 (e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the
42 results in the presence of an agent of a third party authorized to monitor the referendum process;

43
44 (f) Prepare a report on the referendum; and

45
46 (g) Announce the results to the public.

1 **§12XX.104 Subagents.**

2
3 The referendum agent may appoint any individual or individuals necessary or desirable to assist
4 the agent in performing such agent's functions of this subpart. Each individual so appointed may be
5 authorized by the agent to perform any or all of the functions which, in the absence of such appointment,
6 shall be performed by the agent.

7
8 **§12XX.105 Ballots.**

9
10 The referendum agent and subagents shall accept all ballots cast. However, if an agent or
11 subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse
12 above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom
13 challenged, the reasons therefore, the results of any investigations made with respect thereto, and the
14 disposition thereof. Ballots invalid under this subpart shall not be counted.

15
16 **§12XX.106 Referendum report.**

17
18 Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator
19 a report on the results of the referendum, the manner in which it was conducted, the extent and kind of
20 public notice given, and other information pertinent to the analysis of the referendum and its results.

21
22 **§12XX.107 Confidential information.**

23
24 The ballots and other information or reports that reveal, or tend to reveal, the vote of any person
25 covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

26
27 **§12XX.108 OMB control number.**

28
29 The control number assigned to the information collection requirement in this subpart by the
30 Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. is
31 OMB control number XXX.